SUPREME COURT OF THE UNITED STATES.

No. 124.

PETER F. KIMBALL, OWNER OF THE STEAMER DE SOTO, HER TACKLE, APPAREL, AND FURNITURE, AND THOS. W. REED, NOW, OR LATELY, MASTER THEREOF, APP'TS,

vs.

GEORGE H. CALDWELL, MASTER, AND ONE OF THE OWNERS OF THE STEAMER BUCKEYE, AND JAMES SMITH, THE OTHER OWNER OF THE STEAMER BUCKEYE, HER TACKLE, APPAREL, AND FURNITURE.

APPEAL FROM CIRCUIT COURT U. S. FOR LOUISIANA.

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United States district court, in and for the eastern district of La.

Be it remembered, that, on the fifth day of March, A. D. 1844, George H. Caldwell et als., by their proctors, Huston & Finney, came into court, and filed the following libel, to wit:

To the honorable the judges of the district court for the eastern district of Louisiana, holding sessions at the city of New Orleans:

The libel and complaint of George H. Caldwell, master of the steamer Buckeye, for himself, as one of the owners, who is a resident in New Orleans, Louisiana, James Smith, resident in the parish of Catahoula, the other owner of the said steamer Buckeye, her tackle, apparel, and furniture, against the steamer De Soto, her tackle, apparel, and furniture, P. F. Kemball, owners thereof, and Reed, now, or lately, master thereof, both of whom are now within the jurisdiction of this honorable court, said Kimball being a resident of , State of Louisiana, and said Reed being a resident of , and against all persons intervening therein.

And thereupon the said George H. Caldwell, for himself, and the other owners of the said steamer Buckeye, alleges, and articulately propounds as follows:

1. That, in the month of February, 1844, the said steamer Buckeye, whereof said Caldwell was lately master, was at the port of New Orleans, Louisiana, and destined on a voyage from thence to the port of Ouachita, with a lading of goods, of various kinds, and many negro slaves, to the value of fifty thousand dollars, or thereabouts, and was, at that time, a tight, staunch, and well-built steamer, of the burthen of near two hundred tons, or thereabouts, and was then completely rigged and sufficiently provided with tackle, apparel, and furniture, and then had on board, in her service, nine officers, and deck hands, and menials, put together, amounting to about twenty-two in number, which was a full complement of hands—your libellant, Caldwell, being master, to navigate the steamer aforesaid on her said voyage.

2d. That, on the 27th day of February, 1844, the said steamer Buckeye, provided and manned as aforesaid, departed from the port of New Orleans on her aforesaid voyage to the port of Ouachita, propelled by steam, and, in the prosecution thereof, had reached, and was proceeding along, what is called Old river, having entered therein by the lower mouth, which Old river is the cut-off or branch of the river Mississippi, into which Red river empties; and so making her voyage along Old river, hugging as closely as she could with safety the *land* bar on the larboard side, about two hundred miles from the port of New Orleans, and about seven miles from the mouth of Red river; and about 20 minutes after 3 o'clock, A. M., of the 1st day of March, 1844, and at that hour, within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court, the said steamer

proceeding on her voyage as aforesaid, Robert E. Klady, pilot of the said steamer Buckeye, who was then steering the boat, observed the said steamer De Soto, whereof the said Reed was then master, and of the burthen of about 265 tons, coming down the said Old river, obliquely towards the bar, which the said steamer Buckeye was then closely hugging on the left bank of the river ascending, the said De Soto, in full motion, propelled by steam, towards the said Buckeye; that, thereupon, the said pilot rung the alarm bell, and made every possible exertion to give notice to the proper officers and crew of the said De Soto of the danger of the impending collision; that every exertion was made to back the Buckeye, and keep clear of collision, which might have been easily done, had not the officers and crew of the said steamer De Soto, with the most culpable negligence, or designedly and maliciously, continued this direction; and that, notwithstanding the said Buckeye was hugging closely as she could with safety the said sand bar, and was in her proper position and direction, and could not possibly get out of the way of the said De Soto; and notwithstanding there was ample room for the said De Soto to pass, the officers and crew thereof kept on their course and direction aforesaid, and run their boat with great force and *violence* foul of and against the steamer Buckeye aforesaid, striking her with the bow of the De Soto between the jack-staff and the forehead-hatch, on the starboard side of the Buckeye, and nearly at right angles, the acute angle being towards the bow of the Buckeye, and broke her, and parted her hull and cabin, and so completely shattered and destroyed her, that she sunk in a few minutes, leaving nothing visible but one end of her yawl, to the loss of many lives and much property; and that she is a total loss.

3d. That at the time the damage mentioned in the next *proceeding* article happened, it was impossible for said steamer Buckeye to get out of the way of the said steamer De Soto, by reason that the former was hugging as closely as she could, with safety, the sand bar aforesaid, and there was ample room for the said De Soto to steer clear and pass by the said Buckeye without doing any damage whatever; and that, if the officers and crew of the said De Soto had not refused, or at least neglected, to answer or keep clear of the said Buckeye, as they were notified, in every possible manner, as mentioned in the *proceeding* article to do, and which they might, with ease and safety, have done, and which it was their duty to do, the aforesaid damages would not have happened; and that the said steamer Buckeye, before, and at the time of the collision aforesaid, was a tight, strong, and staunch steamer or vessel; and that the libellant, Caldwell, was the master thereof; and that the persons heretofore mentioned as owners are the true owners thereof.

5th. That the said steamer Buckeye sank immediately as aforesaid, with all her cargo, tackle, and furniture, equipments, and provisions. That she was worth, with all her tackle, furniture, equipments, and provisions, six thousand dollars, or thereabouts. That the freight of the cargo on board, and the fare of the passengers, (of whom there were

many,) had they been carried, and which were lost in consequence of the loss of the steamer aforesaid, amounted to fifteen hundred dollars, or thereabouts; and that their immediate consequential damages, resulting from the loss of their books, showing large credits in their favor, and otherwise, are damages to your libellants to the amount of twenty-five hundred dollars; and that thus your libellants have suffered damages, in all, amounting to ten thousand dollars, or thereabouts, from the said collision.

5th. That your libellants fear that the said steamer De Soto will be removed permanently out of the jurisdiction of this honorable court.

6th. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court. In verification whereof, if denied, the libellants pray leave to refer to the depositions and other proofs to be by them exhibited in this case.

Wherefore, the libellants pray that process, in due form of law, according to the course of courts of admiralty, and of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said steamer De Soto, her tackle, apparel, and furniture, and for their lien, according to law, upon the said De Soto, her tackle, apparel, &c., to satisfy the damages hereafter to be adjudicated in favor of libellants; and that all persons having, or pretending to have, any right, title, or interest in said De Soto, may be cited to appear and answer all and singular the matters herein particularly propounded; and that this honorable court would be pleased to pronounce for the damages aforesaid, viz: ten thousand dollars, and to decree such other relief to libellants as shall to law and justice appertain; and also to condemn the said steamer De Soto, her tackle, apparel, and furniture, and all persons intervening therein, for costs; that said Reed and Kimball be cited, and, after due proceedings, be condemned, in solido, to pay the damages aforesaid.

Signed, GEO. H. CALDWELL.
HOUSTON & FINNEY, *Proctors.*

Personally appeared before me, George H. Caldwell, master aforesaid, who subscribed the foregoing libel in my presence; and, being duly sworn, made oath that the material allegations therein are true, to the best of his knowledge and belief.

Signed, GEO. H. CALDWELL.

Sworn to, and subscribed before me, this 5th day of March, A. D. 1844.

Signed, N. R. JENNINGS, *Clerk.*

(Order of the judge on the above libel.)

MARCH 5th, 1844.

Let admiralty process of attachment in rem issue against the steamboat De Soto, as prayed for; and let process in personam issue against the owners, P. F. Kimball and S. Reed, master, citing them to appear and answer this libel within fourteen days from the service hereof.

Signed, THEO. H. McCALEB, *U. S. Judge.*

And on the same day, (March 5th, 1844,) the following writ of seizure was issued from the clerk's office, to wit:

The President of the United States of America, to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded, forthwith, to seize and take into your possession the steamer De Soto, her tackle, apparel, and furniture, now libelled by George H. Caldwell et als., in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having, or pretending to have, any right, title, in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have, or can, why the said De Soto, her tackle, apparel, and furniture, should not be condemned and sold agreeably to the prayer of the libellant; and how you shall have executed this warrant that you make return according to law.

Witness the honorable Theo. H. McCaleb, judge of the said court, this 5th day of March, 1844, and the 68th year of the independence of the United States.

Signed, N. R. JENNINGS, *Clerk*.

Marshal's return: Received 5th March, 1844, and same day executed the within warrant, by seizing and taking into my possession the steamboat De Soto, her tackle, apparel, &c., published monition, and otherwise executed this writ according to law.

Signed, WM. K. STILES, *D'y U. S. M.*

And on the 7th day of March, 1844, the following citation on P. F. Kimball was issued from the clerk's office, to wit:

United States district court, sitting in and for the eastern district of Louisiana.

To P. F. Kimball, owner of the steamboat De Soto, now in New Orleans:

You are hereby summoned to comply with the prayer of the annexed petition, or file your answer thereto in writing in the office of the clerk of the district court of the United States for the eastern district of Louisiana, in the city of New Orleans, within fourteen days from service hereof, or judgment will be given against you by default.

Witness the honorable Theo. H. McCaleb, at the city of New Orleans, this seventh day of March, 1844, and 68th year of the independence of the United States.

Signed, N. R. JENNINGS, *Clerk*.

Marshal's return: Received 7th of March, 1844, and same day served a copy of the within on Capt. P. F. Kimball, in person, in the city of New Orleans.

Signed, WM. K. STILES,
D'y U. S. Marshal.

And on the same day the following citation on S. Reed was issued from the clerk's office, to wit:

U. S. district court, sitting in and for the eastern district of Louisiana.

To Reed, owner of the steamboat De Soto, now in New Orleans:

You are hereby summoned to comply with the prayer of the annexed petition, or file your answer thereto, in writing, in the office of the clerk of the district court of the United States for the eastern district of Louisiana, in the city of New Orleans, within fourteen days from service hereof, or judgment will be given against you by default.

Witness the honorable Theo. H. McCaleb, at the city of New Orleans, this 7th day of March, 1844, and 68th year of the independence of the United States.

Signed, N. R. JENNINGS, *Clerk.*

Marshal's return: Received March 7th, 1844, and same day served a copy of the within on Capt. Reed, of the steamer De Soto, in person, in the city of New Orleans.

Signed, WM. K. STILES,
D'y U. S. Marshal.

And on the 7th day of March, A. D. 1844, the claimants appeared in court, and filed the following bond, to wit:

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

Know all men by these presents, that we, P. F. Kimball, as principal, and E. H. Pomeroy and Edward Parker, as sureties, are held and firmly bound unto A. S. Robertson, marshal of the United States for the eastern district of Louisiana, in the sum of fifteen thousand dollars, lawful money of the United States, for the payment whereof, to the said A. S. Robertson, his heirs, executors, administrators, assigns, or successors in office, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our respective names and seals, hereunto affixed by us, at New Orleans, this seventh day of March, one thousand eight hundred and forty-four.

Whereas, an admiralty warrant was lately issued out of the honorable the district court of the United States for the eastern district of Louisiana, at the suit of George H. Caldwell, of steamboat Buckeye, and numbered six thousand and ninety-five (6,095) on the docket of the said court, commanding the said marshal to seize and take into his possession the steamboat De Soto, which has been seized accordingly, but has been released from said seizure, and delivered to P. F. Kimball. The said P. F. Kimball, at the time, and by reason of the signing, sealing, and delivery of these presents, filed a claim to the said steamboat De Soto in the clerk's office of the said court; and which claim is now of record.

Now, the condition of the above obligation is such, that, if judgment

shall pass in favor of the libellant against the said claimant, P. F. Kimball, and the said claimant shall forthwith pay into the said district court, or to the proper officers thereof, the full amount of said judgment, together with all the costs of said suit, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

Signed, P. F. KIMBALL, [SEAL.]
EDWARD L. A. POMEROY, [SEAL.]
EDWARD PARKER. [SEAL.]

Signed, and sealed, and delivered in the presence of—
Sig'd, WM. K. STILES.

And on the 12th of March, 1844, the following rule was entered of record, to wit:

U. S. district court, eastern district, March 12th, 1844. Present: The hon. Theo. H. McCaleb.

GEORGE H. CALDWELL, master and owner of steamboat Buckeye,
vs.
PETER F. KIMBALL, owner of steamboat De Soto, and als., and against steamboat, her tackle, apparel, and furniture.

The defendants, by their counsel, R. N. & A. N. Ogden, now move the court that the libellants be ordered to shew cause, on Wednesday, the 13th March, at 10 o'clock, A. M., why the bond required by the marshal to release the said steamboat De Soto from seizure should not be reduced, on the following grounds:

1st. The libellants claim two thousand five hundred dollars for the loss of the books and papers of the steamer Buckeye, which have been since recovered.

2d. The value of the Buckeye is stated at six thousand five hundred dollars, whereas she only cost the libellants the sum of three thousand dollars.

And defendants move the court to fix the amount of the bond to be required at a just and reasonable sum.

CLERK'S OFFICE, 12*th March*, 1844.

A true extract from the minutes.
Signed, JAMES R. JENNINGS,
Deputy Clerk.

Marshal's return: Received March 12th, 1844, and same day served a copy of the within rule on Mr. Finney, of the professional firm of Houston & Finney, in person, who requested me to serve the copy on Mr. Jas. Smith, part owner of the Buckeye; and, after diligent search and enquiry, the said Smith could not be found.

Signed, WM. K. STILES,
D'y U. S. Marshal.

And on the 13th day of March, 1844, the following affidavit of James G. Bell was filed in the clerk's office, to wit:

GEO. H. CALDWELL et als.,
vs.
Steamboat DE SOTO, her tackle, &c.

James G. Bell, being duly sworn, deposeth and says, that he has been engaged in the steamboat business, and is acquainted with the value of steamboats. That he knew the steamboat Buckeye that was lately sunk. That she was eight or nine years old. That he would value the tackle, apparel, and furniture of the steamboat Buckeye, at the time she was sunk, at from one thousand to twelve hundred dollars. That he considers the provisions on board to be worth about two hundred dollars for the voyage.

(Signed) JAMES G. BELL.

Sworn to and subscribed before me, this 13th day of March, 1844.

(Signed) JAMES R. JENNINGS,
Dy. Clerk.

James G. Bell, being duly sworn, deposeth and says: that in that part of the affidavit wherein he states that the apparel, tackle, and furniture was worth from one thousand to twelve hundred dollars, that he intended to include the hull, engine and tackle, apparel and furniture, in that estimation.

Sworn to before me, this 14th day of March, 1844.

(Signed) JAMES R. JENNINGS,
Dy. Clerk.

And on the same day, (13th March, 1844,) the following affidavits of John A. Stevenson and John G. Bell, were filed:

GEORGE H. CALDWELL et als.,
vs.
STEAMER DE SOTO, her tackle, apparel, and furniture,
and P. F. KIMBALL and THOS. W. REED.

John A. Stevenson, being duly sworn, deposeth and says: that he has been engaged for five years in steamboating; that he is familiar with the value of steamboats, and is now a owner or part owner in a steamboat; that he knew the steamer Buckeye that was lately sunk in collision with the De Soto; deponent heard Capt. Caldwell say, last fall, previous to his purchasing the Buckeye, that he could purchase her for twenty-five hundred dollars; but deponent does not know what Capt. Caldwell actually paid for her; deponent thinks, that at the time she was sunk, that the boat, with her tackle, apparel, and furniture, might have been worth about $1,500, though he would not have given so much as that sum himself; deponent considers the amount of provision on board of a boat in the Ouachita trade, for a voyage, to be worth about one hundred and fifty dollars; deponent heard Mr. James Smith, one of the libellants, say, that the books of the steamer Buckeye were saved; that Mr. Smith remarked, at the same time, that there were not

many accounts on the books; the principal ones were against Major Downs and Mr. Pargoud, for about four hundred dollars; that the above named gentlemen had running accounts with the Buckeye; Capt. Caldwell owed them, and he presumed it would be settled in that way.

(Signed) JNO. A. STEVENSON.

Sworn and subscribed before me, this 13th day of March, 1844.

(Signed) JAMES R. JENNINGS,
Dy. Clerk.

And on the 14th day of March, the following copy of the act of sale of steamer Buckeye was filed in this office:

State of Louisiana, city of New Orleans:

Be it known, that this day, before me, William Christy, a notary public, in and for the said city and parish of New Orleans, duly commissioned and qualified, personally came and appeared Charles J. Bunham, of this city, who declared, that for the consideration and on the terms and conditions hereinafter expressed, he does, by these presents, grant, bargain, sell, convey, and deliver, unto George H. Caldwell, also of this city, the one undivided half part; unto Algernon Sidney Robertson, also of this city, the one undivided fourth part, and unto James Smith, of the parish of Catahoula, in this State, the one undivided fourth part, of the steamer called the Buckeye, together with all her sails, rigging, boats, engines, furniture, and appurtenances; the said Caldwell being present, and accepting for himself and the said James Smith; and John P. Walden, the agent and attorney in fact of the said Robertson, being present and accepting for him; which said steamer is enrolled at the port of New Orleans, in the words following, to wit: "Enrolment, No. 49.—Permanent." In conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels, to be employed in the coasting trade and fisheries, and for regulating the same. Charles J. Bunham, of the city of New Orleans, and State of Louisiana, having taken or subscribed the oath required by the said act, and having sworn that he is a citizen of the United States, sole owner of the ship or vessel called the Buckeye, of New Orleans, whereof he, Chas. J. Bunham, is at present master, and, as he hath sworn, is a citizen of the United States; and that the said ship or vessel was built at Cincinnati, in the State of Ohio, in the year 1837, as per enrolment, No. 48, issued at the port of Louisville, on the first day of October, 1842, now surrendered, property changed; and said enrolment having certified, that the said ship or vessel has one deck and no masts, and that her length is one hundred and forty-six feet, her breadth twenty-one feet, her depth six feet, and that she measures one hundred and seventy tons; that she is a steamboat, has cabins above deck, and a plain head. And the said Chas. J. Bunham, having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said act, the said steamboat has been duly enrolled at the port of New Orleans. Given under our hand and seal, at the port of New Orleans, this twenty-

fourth day of April, in the year one thousand eight hundred and forty-three."

To have and to hold the said steamboat unto the said purchasers, their heirs and assigns, to their proper use and behoof, forever; and the said vendor, for himself and his heirs, the said steamboat shall and will warrant and forever defend, against the lawful claims of all persons whomsoever, by these presents. This sale is made for and in consideration of the sum of three thousand dollars, eighteen hundred dollars of which have been paid in ready money; and in liquidation of the balance, the said Caldwell has given his promissory note, drawn in favor of the said vendor, for nine hundred and fifty dollars, dated this day, and made payable on the first day of February next; and to make up the remaining sum of $250, the said Walden, in his said capacity, binds and obligates the said Robertson to pay it (the said sum of two hundred and fifty dollars) to the said vendor, on the said first day of February next; the receipt of which money and note, he, the said vendor, hereby acknowledges; and as this sale is intended by agreement to be a conditional one, it is further understood and agreed to, by and between the said parties—first, that in order to secure the punctual payment of the aforesaid note for nine hundred and fifty dollars, and the aforesaid sum of two hundred and fifty dollars, when the same shall fall due, the said purchasers hereby obligate and bind themselves, as soon as practicable after the completion of these presents, to cause the said steamer, machinery, furniture, &c., to be insured in one of the most solvent insurance offices in the city of Cincinnati, State of Ohio, for the sum of two thousand dollars; which insurance shall be so made and renewed, from time to time, as to cover the aforesaid balances, whether they be punctually paid at maturity or not; and that all such policy or policies of insurance, as may be procured as aforesaid, shall be endorsed over to the said Bunham, to secure him in case of loss of the said boat, and the non-payment of the aforesaid balances, or either of them; secondly, and finally, it is further understood and agreed to, by and between the said parties, that in case the said note of the said Caldwell, and the said sum of two hundred and fifty dollars, shall not be punctually paid on the said first day of February next, then and in that case, this sale shall be considered as never having been made, and the said Bunham shall have the right to take immediate possession of the said steamer, appurtenances, &c., and to sell her on such terms and conditions as he may think best, to ensure a prompt payment of the aforesaid balances; and in case such sale as he may make should produce more than sufficient to pay his said balances, he shall hand it over, without any delay, to the aforesaid purchasers.

Thus done and passed, in my office, at the said city of New Orleans, in the presence of W. G. Latham and H. Rareshide, who hereunto sign their names in duplicate with the said parties and me, said notary,

on this twenty-seventh day of September, eighteen hundred and forty-three.

Signed,

GEO. H. CALDWELL,
A. SIDNEY ROBERTSON,
By J. P. Walden.
C. J. BUNHAM,
W. G. LATHAM,
H. RACECHIDE,
WM. CHRISTY.

I certify the foregoing to be a true copy of the original on file and of record in my office.

Signed, WM. CHRISTY, *Notary Public.*

March 13th, 1844.

And on the 14th of March, 1844, the following entry was made on the minutes, to wit:

THURSDAY, *March 14th, A. D.* 1844.

The court met, pursuant to adjournment. Present, the Hon. Theo. H. McCaleb.

GEORGE H. CALDWELL and als.
vs.
STEAMBOAT DE SOTO and Owners. } No. 6,066.

The rule taken in this case by the counsels for the respondents and claimants, to shew cause why the bond already given for the release of the steamboat De Soto, should not be reduced, came on to-day for trial. Ogden, esq., for the respondents, and Finney, esq., for the libellants, appearing; when, after hearing argument of counsel, and evidence being adduced, the court ordered, that the bond given for the sum of fifteen thousand dollars, be reduced to the amount of seven thousand five hundred dollars, and that the marshal be authorized to give up the first bond to the respondents and claimants, on their complying with the within order.

And on the 18th of March, 1844, the claim and answer of Peter F. Kimball and Thomas W. Reed, was filed in the clerk's office, to wit:

United States of America, eastern district of La.

To the honorable Theodore H. McCaleb, judge of the district court of the United States for the eastern district of Louisiana, holding sessions at the city of New Orleans.

The answer of Peter F. Kimball, of Natchitoches, in the State of Louisiana, and of Thomas W. Reed, of the city of Lafayette, in said State, to the libel and complaint of George H. Caldwell and James Smith, against the said steamboat De Soto, her tackle, apparel, and furniture, and against the said Peter F. Kimball as owner thereof, and the said Reed as master, and against all other persons lawfully intervening therein, alleges and articulately propounds as follows:

First. That the respondent, the said Peter F. Kimball, is the true and lawful owner of the said steamboat De Soto, a vessel of 265 tons, or thereabouts.

Second. That the collision between the steamboat Buckeye and the steamboat De Soto did not take place within the ebb and flow of the tide, and within the admiralty jurisdiction of this honorable court, as by the libellants alleged; that the tide does not ebb and flow at the place where said collision is alleged to have taken place, and where these respondents allege and propound it did take place, to wit, in Old river, from two to three miles above its lower mouth, within the body of the county of Point Coupee or of Feliciana, which lies on either side of the river at that point, and within the jurisdiction of the State of Louisiana, and not on tide waters, as by libellants alleged.

Third. That the said steamboat De Soto was not built or intended for a sea vessel, and was never engaged in maritime trade or navigation; that she was built and intended for, and, at the time the said collision took place, was employed exclusively in, trade and navigation upon the waters of the Mississippi river and its tributary streams, and that her employment was substantially out of tide waters.

Fourth. That the said steamer Buckeye was not a maritime vessel, and was not engaged in any maritime voyage, but was employed substantially out of tide waters, as was the De Soto, in the navigation of the Mississippi and its tributaries.

Fifth. Respondents allege and propound, that at the time of the alleged collision, both the said steamboat De Soto and the said steamboat Buckeye, were employed only in navigation between the city of New Orleans and the interior towns on the Mississippi and its tributary waters. The said steamer De Soto being engaged in navigation between the city of New Orleans and the town of Natchitoches, on Red river; for the greater part of the distance between which points, the voyage is performed on waters where the influence of the tides is not felt, and out of and beyond tide waters; and the said steamboat Buckeye being engaged in navigation between the city of New Orleans and the town of Monroe, on the river Ouachita; for the greater part of the distance between which points, the voyage is performed in waters not within the influence of the tides.

Sixth. That by reason of the premises, this honorable court has not jurisdiction, and ought not to proceed to enforce the claim alleged in the libel aforesaid, against the said steamboat De Soto, or against these respondents. Wherefore, respondents pray that the libel may be dismissed for a want of jurisdiction. But should the court be of opinion that it has jurisdiction, then respondents further allege and propound:

Seventh. And respondents admitting that a collision did take place between the said steamers, allege and propound, that the manner and cause of said collision is falsely alleged by said libellants, and that the truth is as is hereinafter propounded. That the said steamboat De Soto, being in good order and well and sufficiently equipped and manned, and employed in navigating between the city of New Orleans and

Nachitoches, on the Red river, one of the tributaries of the river Mississippi, and having performed her upward trip, and being on her return voyage, with a cargo of cotton and with passengers bound to New Orleans, on Friday, the 1st of March, at 3 o'clock in the forenoon, while running in the middle of what is called Old river, about three or four miles below the mouth of the Atchafalya river, came in sight of a steamboat, which afterwards proved to be the Buckeye, ascending the river on the island shore, or the right hand side of the river ascending, and said boat was thus out of her place; it being usual and customary for the ascending boats to ascend at that place on the left hand side of the river.

Seventh. That the night was very clear, and the moon, at the time of the collision, about half an hour high; and the said steamboat, De Soto, provided with her signal lights so as to be easily seen at a distance.

Eighth. That before passing the De Soto, and when at a distance, from a half to three quarters of a mile, the said De Soto being, as nearly as possible, in the middle of the river, which was her proper place, and the said steamer Buckeye, then running on the right hand, or island shore, which was not her proper place, the said steamer Buckeye attempted to cross the river, and was carelessly standing on the path of the De Soto. That, as soon as the fact was discovered of the intention of the pilot of the Buckeye, the officers of the De Soto caused her engines to be stopped, and her wheels to be backed, and made every exertion to prevent a collision; notwithstanding which they came together, the starboard side of the Buckeye, in front, striking the larboard side of the De Soto near the stern; and the said steamer Buckeye, being very old and unsound, sunk in deep water, her cabin parting from her hull, and the De Soto, by backing her starboard engine, came along side said cabin.

Ninth. That the collision aforesaid was occasioned by the great negligence and want of care of the officers of the said steamer Buckeye, and by the inexperience and want of skill of the pilot; and that it was not occasioned by any want of skill or care, or by any malice, or evil design, on the part of the pilot or master, or any of the crew on board the said steamer De Soto. And these respondents are not responsible for any damages.

Tenth. That the said pilot, and the master and crew of the said steamer De Soto, used the greatest care and skill in the management of the same on the night aforesaid, and used every possible precaution to prevent the occurrence of any accident.

Eleventh. And respondent further alleges that the said steamer Buckeye was very old, and was entirely unfit for navigation; that her timbers were decayed, and that she was then in a leaky condition, and unsafe for the voyage.

Twelfth. That all and singular the premises are true; in verification whereof, if denied, these respondents crave leave to refer to the depositions and other proofs to be by him exhibited in this cause. Wherefore these respondents pray that this honorable court would be pleased

to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

P. K. KIMBALL & J. W. REED.

(Signed) R. N. & A. N. OGDEN,
Proctors of Respondent.

Sworn to and subscribed, before me, this 16th day of March, A. D. 1844.

Sig'd, N. R. JENNINGS, *Clerk.*

And on the 17th April, 1844, the following affidavit of Geo. H. Caldwell was filed in the clerk's office, to wit:

GEORGE H. CALDWELL, master of steamer Buckeye,
vs.
THE STEAMER BOAT DE SOTO, Kimbell & Reed owners thereof.
} In admiralty.

U. S. district court of the eastern district of Louisiana.

Personally appeared George H. Caldwell, who, being duly sworn, states, that he is one of the parties to the above cause as libellant; that the testimony of H. Filhiol, O. A. Miller, Capt. Goodrich, Capt. H, Wilson, Silas Miller, and Cyrus McClure, is necessary in the above entitled cause; that the testimony of each one is necessary. They are all now present in New Orleans, and are transient persons engaged in the navigation of the Mississippi and its tributaries; and are about to go out of this district, and more than an hundred miles from this city, before the trial of the above cause. Wherefore it is prayed that the testimony of the above witnesses be taken de bene esse.

(Signed) GEO. H. CALDWELL.

Sworn to and subscribed, before me, this 17th day of April, A. D. 1844.

Signed, N. R. JENNINGS, *Clerk.*

And on the 22d of April, 1844, the following entry of record was made in the minutes, to wit:

April 22d, A. D. 1844.

Present, the Hon. Theo. H. McCaleb.

GEORGE H. CALDWELL, et als.,
vs.
The DE SOTO, master and owners.

On motion of R. N. and A. N. Ogden, of counsel for the respondents in the above entitled case, it is ordered by the court that the libellants shew cause, on Tuesday, the 30th instant, why good and sufficient security should not be furnished by them in this case; and that such security should be approved by the court as sufficient to meet the costs and damages incurred, and to be incurred in the prosecution of said suit.

And on the 30th of April, 1844, the following consent rule, to take evidence, was filed in the clerk's office, to wit:

GEORGE H. CALDWELL et als., vs. STEAMER DE SOTO. } In admiralty.

U. S. district court:

It is agreed that the testimony of Capt. Garrett Jourdan, H. Filhiol, Samuel Bandy, and J. Jones, be taken by consent before N. R. Jennings, esq., clerk under the interrogatories prepared; and that all objections to the manner of taking the same be waived, but all legal objections to the testimony reserved.

Signed, HOUSTEN, OGDENS.

And on the 24th of May, 1844, the following rule and notice, to give other and additional security, was filed in the clerk's office, to wit:

CALDWELL et als., vs. THE OWNERS OF THE DE SOTO, P. F. Kimball and als. } In admiralty.

United States district court:

The libellants will please take notice, that we are instructed, by the respondents, to require additional security for the costs in this case; on the grounds that the security already furnished has since become insolvent; and that we shall make a motion, on Monday next, 25th instant, for an order requiring other security to be given; or, in default thereof, that the libel be dismissed.

Signed, R. N. & A. N. OGDEN, *Proctors of Respondents.*

Received notice of the above on the 24th inst., and waive all exceptions.

Signed, HUSTON.

And on the 31st May, 1844, the following entry of record was made on the minutes of the court, to wit:

May 31*st*, 1844.

Present, the Hon. Theo. H. McCaleb.

CALDWELL and als., owners of the Buckeye, vs. THE OWNERS OF THE DE SOTO.

On motion of R. N. & A. N. Ogden, of counsel for the respondents, it is ordered by the court, that the libellants shew cause, on Thursday next, the 6th proximo, why they should not furnish other additional and sufficient security for the costs in this case. The security already furnished being insufficient, and having, since it was furnished, become insolvent; and, in default thereof, why their libel and suit should not be dismissed.

And on the 6th of June, 1844, the following entry of record was made on the minutes of this court, to wit:

June 6th, 1844.

Present, the Hon. Theo. H. McCaleb.

G. H. Caldwell et als.,
vs.
Steamboat De Soto.

The rule taken by the respondents, on the 31st of May last, came on this day for hearing, when, by order of court, the same was continued until to-morrow, at 9 o'clock, A. M.

And, on the 7th of June, A. D. 1844, the following entry of record was made on the minutes of the court, to wit:

Friday, June 7th, A. D. 1844.

The court met pursuant to adjournment. Present, the Hon. Theo. H. McCaleb.

George H. Caldwell et als.,
vs.
Steamboat De Soto and Owners.

This cause was this day called for trial. King, Huston, and Finney, esqrs., for the libellants. Ogdens, esqs., for the respondents. Evidence was introduced; when, upon consent of parties, it was agreed upon, that the evidence be referred to the court, and that the further trial of the cause be continued until Thursday, the 19th instant. It is further ordered, that the trial of the rule relating to costs be continued until the same day.

And on the 7th day of June, A. D. 1844, the following agreement of counsel was filed in the clerk's office, to wit:

Captain and Owners of steamer Buckeye.
vs.
Captain and Owners of steamer De Soto.
In admiralty.

U. S. district court, east. dist. of La.

It is agreed, between the counsel of the parties in the above entitled case, that the depositions taken in their presence, this day, and in future, before Recorder Baldwin, under a reference to him by the legislature, shall be received and used as evidence on any trial of the suit at law, either in the court where the suit is now pending, or in any other to which it may be transferred, both parties reserving their rights to object to the competence or legality of such evidence, but waiving all objections to the form and manner of taking it. And this agreement not to prejudice any exception or answer which deponents may set up; but the testimony to be read on the trial of the cause in any court.

Signed, HUSTON & FINNEY,
For Plaintiffs.
R. N. & A. N. OGDEN,
For Defendants.

And on the 19th of June, A. D. 1844, the following entry of record was made on the minutes of this court, to wit:

WEDNESDAY, *June 19th, A. D.* 1844.

The court met pursuant to adjournment. Present, the Hon. Theo. H. McCaleb.

GEO. H. CALDWELL et als.
vs.
STEAMBOAT DE SOTO.

This cause was this day called for trial, according to the agreement of the parties and the order of court, as entered on the 7th inst. The argument of the cause was commenced by King, esq., one of the counsel for the libellants, and continued by the counsel for the respondent. The court, after hearing argument as above, postponed the further trial until Tuesday next, the 25th of June, at 9 o'clock, A. M.

And on the 11th December, 1844, the following entry of record was made on this minutes of the court, to wit:

WEDNESDAY, *December 11th, A. D.* 1844.

The court met pursuant to adjournment. Present, the Hon. Theo. H. McCaleb.

GEO. H. CALDWELL et als.
vs.
STEAMBOAT DE SOTO and owners.

The court this day delivered its judgment in this case; and for reasons set forth at length in the opinion, as read from the bench, it is ordered, adjudged, and decreed, that judgment be duly entered up in favor of the libellants, George H. Caldwell and als., and against the steamboat De Soto and owners, and the parties on the bonds filed in this case, in the sum of five thousand five hundred dollars, and cost of suit.

And on the same day as above, the following motion for a new trial was filed, and of record in the clerk's office:

WEDNESDAY, *11th December*, 1844.

GEO. H. CALDWELL et als.
vs.
STEAMBOAT DE SOTO and owners.

And now come the respondents, by their proctors, and move the court for a rule on the libellants, to shew cause, on the 17th day of December, at 10 o'clock, A. M., why a new trial should not be granted on the following grounds, viz:

1st. The decree of the court is not supported by the law and the evidence, but is contrary thereto.

2d. The court excluded from its consideration, according to the opinion rendered, much of the evidence of the respondents on which they relied, and which the respondents now aver was sufficient to throw the responsi-

bility of the collision entirely on the libellants themselves; and the respondents contend they were entitled to the opinion of the court on the weight and effect to which this evidence is entitled.

3d. That the court did not give its due weight to the important fact, proved by Klady, the pilot of the Buckeye, viz., that just before the collision he had lost sight of the De Soto for several minutes, (for four or five, or it may be ten, and becoming uneasy, pushed aside the sash of the window on his right, and then saw the De Soto at a distance of about 80 yards, bearing on the Buckeye; a fact wholly inconsistent with the hypothesis of her position assumed by libellants, and considered by the court as proved.

4th. That the court erred in its construction of the statute of Louisiana of 1824.

And on the 13th day of December, 1844, the following entry of record was made on the minutes of this court, to wit:

FRIDAY, *December 13th*, 1844.

The court met pursuant to adjournment. Present, the Hon. Theo. H. McCaleb.

GEO. H. CALDWELL et als.
vs.
STEAMBOAT DE SOTO and owners.

The motion for a new trial in the above entitled case, as entered on the 11th inst., was this day, on motion of R. N. Ogden, esq , of counsel for respondents, submitted to the court without argument. It is ordered by the court that the motion for a new trial be overruled.

FRIDAY, *December 13th*, 1844.

The court met pursuant to adjournment. Present, the Hon. Theo. H. McCaleb.

GEO. H. CALDWELL et als.
vs.
STEAMBOAT DE SOTO and owners.

Upon motion of R. N. Ogden, esq., of counsel for respondents, and shewing to the court that they are dissatisfied with the judgment and decree of the court, as rendered in this case, it is ordered, that the respondents be allowed a suspension appeal from said judgment to the next term of the hon. the circuit court of the United States for the 5th circuit and eastern district of Louisiana, upon the respondents giving bond in the sum of eight thousand and two hundred and fifty dollars, conditioned according to law.

And on the 17th of December, 1844, the following appeal bond was filed by the respondents in the clerk's office, to wit:

Know all men by these presents, that we, Peter F. Kimball and Thomas W. Reed, respondents and claimants, as principals, and E. H.

Pomroy, E. H. Satterfield, B. V. Cortes, and Edward Parker, as sureties, are held and firmly bound in solido unto the libellants, George H. Caldwell and als., their executors, administrators, and assigns, in the sum of eight thousand two hundred and fifty dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated at New Orleans, on the 16th day of December, in the year of our Lord eighteen hundred and forty-four.

Whereas, the above bounded Peter F. Kimball and Thomas W. Reed have, on the thirteenth day of December, 1844, obtained a suspensive appeal from a final judgment rendered by the honorable the judge of the United States district court for the eastern district of Louisiana, on the eleventh day of December, 1844, in the case of George H. Caldwell and als. vs. The Steamboat De Soto, master, and owners, to the next term of the circuit court of the United States for the fifth circuit, east. district of Louisiana, to be holden at New Orleans on the first Monday of April next.

Now, the condition of this obligation is such, that the above bounded Peter F. Kimball and Thomas W. Reed shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them, and for all damages and costs which the libellants may sustain by reason of the said respondents' appeal, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise, that the said E. H. Pomroy, E. H. Satterfield, B. V. Cortes, and Edward Parker, sureties, shall be liable in their place.

(Signed) P. F. KIMBALL, [SEAL.]
J. W. REED, [SEAL.]
E. H. POMROY, [SEAL.]
E. H. SATTERFIELD, [SEAL.]
B. V. CORTES, [SEAL.]
And EDWARD PARKER. [SEAL.]

Signed and sealed in the presence of—
(Signed) A. BOISBLANC.

And on the 2d of January, 1845, the following entry of record was made on the minutes of this court:

THURSDAY, *January 2d, A. D.* 1845.

The court met pursuant to adjournment. Present, the Hon. Theo. H. McCaleb.

GEORGE H. CALDWELL et als.
vs.
The STEAMER DE SOTO, her master and owners.

On motion of Finney, of counsel for libellants, it is ordered, that the respondents shew cause, on Wednesday, the 8th of January, at 10 o'clock, A. M., why the order heretofore made, granting an appeal from the decree rendered in the above case, should not be set aside, and

the appeal dismissed, for want of a good appeal bond, with legal and sufficient security.

And on the 13th of January, 1845, the following entry of record was made on the minutes of this court, to wit:

MONDAY, *January* 13*th*, *A. D.* 1845.

The court met pursuant to adjournment. Present, the Hon. Theo. H. McCaleb.

GEORGE H. CALDWELL et als.
vs.
The STEAMBOAT DE SOTO.

The rule filed in this case, and fixed for trial this day, was, by consent of parties, continued until Saturday, the 18th inst., at 10 o'clock, A. M.

And on the 18th of January, 1845, the following entry was made on minutes of this court, to wit:

SATURDAY, *January* 18*th*, 1845.

Present, the Hon. Theo. H. McCaleb.

GEORGE H. CALDWELL et als.
vs.
The STEAMBOAT DE SOTO and owners.

The rule taken on the 2d of January, by the libellants in this case, came on to-day for trial. Finney, esq., for plaintiffs in rule, and Ogden, esq., for respondents; when evidence being adduced, and argument of counsel heard, and the court being satisfied that the security was fully solvent and sufficient, it is ordered, that the said rule be dismissed at the costs of the plaintiffs.

Evidence taken, "de bene esse," before N. R. Jennings, clerk of the United States district court for the east. dist. of La., and commissioner. Taken by consent of parties. For libellants.

Evidence of James Woodburne, March 22, A. D. 1844.

James Woodburne, witnesses on behalf of libellants, being sworn, deposes, that he resides in the parish of Ouachita, La., and came down from Monroe on the steamer Fort Towson, her last trip, to the port of New Orleans. States, that when he got to that part of Old river where the steamer Buckeye was said to have been sunk, he was requested by Captain Caldwell to make an examination of the place where the wreck was, and the river thereabout. He was requested by the captain to do so, as being from the neighborhood where Captain Caldwell received a good deal of patronage; and that he was willing to make the examination for his own satisfaction. Some pieces of timber, a stancheon, and a plank, indicated the place where the Buckeye was supposed to have been sunk. A Mr. White, living close by the place of collision, was with the witness, and also pointed it out as being the place where the said boat was sunk. This examination was had on the 20th of March.

Witness went, with five or six others, to wit, Mr. Dunston, Parker, White, Captain Caldwell, with two sailors, in a yawl, to make the examination; and a line was thrown on the island side of the wreck, and seven fathom water found; the line was thrown on what was believed to be the wreck, and six fathom water was found. About 15 or 20 feet from the wreck to the bar soundings were again taken, and 6½ fathom water was found. Then witness proceeded to sound a few feet higher up the river, the same side of the wreck with the other soundings, and found 6½ fathom water. Witness then proceeded at right angles, directly from the wreck to the bar, measuring about 100 yards, sounded again, and found 6½ fathom water. Then measured 100 yards further towards the bar, and there found 5½ fathoms; then went 100 yards further in the same line towards the bar, and found 5½ fathoms; thence, on the same line, measured 100 yards further towards the bar, and there found 3 fathoms and a foot water; thence, on the same line, further towards the bar, about 30 or 40 yards, as far as the willows, and found 2 fathoms and four feet water. Witness then returned to the wreck, and started at right angles for the island shore. From wreck, 100 yards, measured 7 fathoms 4 feet; 100 yards further, measured 8 fathoms 3 feet; thence, 100 yards further, measured 9 fathoms 4 feet; thence, 100 yards further, measured 9 fathoms 5 feet; thence, 100 yards further, measured 5 fathoms 3 feet; thence, 40 or 50 yards further, when witness got to shore, and did not sound, being a bluff bank.

Witness states, that the channel of the river is evidently between the wreck and the island side. Witness states that he saw three snags, which evidently were permanent snags. Two of these snags, if a boat was coming up the river, directly over the wreck, and pursuing the bar side, would be entirely out of her course, and on the island side; one of which snags, he thinks the lowest one, is about 30 or 40 yards from the line which a boat would be supposed to run on that course; and the other one, about 60 yards on the island side of the same line, is a little above the wreck; the third snag is between the wreck, and so nearly in the line of the course as stated, that he could not tell which side of it a boat would have to pass.

On the island side of the wreck the river has the appearance of a regular bend. Witness states, that from the wreck to the willows the distance, as measured by him, was 476 yards 2 feet, and from the wreck to the island 557 yards 1 foot.

Cross-examined.—States that the third snag above mentioned, as in the course, is between 60 and 100 yards from the wreck, and below it. These snags are easily seen—standing clear and plain above the water.

(Signed) JAMES WOODBURNE.

It is admitted that the witness, in giving the above testimony, refreshed his memory from a written memoranda, which he held in his hand, purporting to be taken down at the time the admeasurement and soundings were made.

G. W. Parker, witness for libellants, states, that, the evidence of

Mr. Woodburne, being read over to him, as respects the admeasurement and soundings, he corroborates the same in every particular; and that he was present, and assisted when the said measurement and soundings were made. States that the channel is on the island side of the river where the wreck is. States that the river is not a straight stretch either above or below the wreck; that there is a bend out on one side and in on the other. Witness states, that, as well as he recollects, he observed three snags below, and one above the wreck; three snags he noticed; there might have been others. Being asked, if a boat running up the river over the wreck, preserving the same distance from the two shores as she goes along, in proportion to the width of the river, what could be the position of the snags in reference to this course? answers, that they would be 60 or 50 yards on the bar side; that is to say, one of them would have been that distance, the others further in.

Cross-examined.—Being asked, whether the statement made by the last witness, Woodburne, to wit, whether one of the lower snags was not, or nearly so, directly in the line of the course of the boat, was not correct? answers, that he did not notice the position of the snags very particularly, although he had intended to do so, and cannot positively answer the question. That the description of their position as given above is as accurate as his recollection enables him to make. Witness states, that he resides in Union parish, opposite the mouth of Bayou Bartholemy; and that he has been acquainted with Captain Caldwell about three years.

Examination in chief resumed.—States that he has never given a pound of freight to Capt. Caldwell; and that he preferred to patronize other boats; witness being inclined to favor other persons, and not from any impression that Captain Caldwell's boat was not a safe one.

The counsel for the respondents here objected to this testimony, with regard to the witness's feelings and opinions, as not being proper evidence.

Signed, G. W. PARKER.

The above witnesses subscribed their names to their several depositions in my presence, this 22d day of March, 1844.

Signed, N. R. JENNINGS, *Clerk*.

SATURDAY, *March 23d*, 1844.

Timothy Duston deposes, that on Wednesday last, the 20th March, he assisted Captain Caldwell, Mr. Woodburne, and others, in taking the admeasurement and soundings of the river at the place where the steamer Buckeye was said to have been sunk, and thereabouts; and that he is now a pilot on the steamboat Fort Towson, and came down in that boat on her last trip from Icor-Talse to the port of New Orleans in the said capacity. Certain portions of a steamboat, to wit, the stancheon, a clamp, and other things; also, the soundings, indicated the place where the said steamboat was sunk, and satisfied the mind of the witness of the fact; the soundings being on something hard, and six feet shorter than the soundings elsewhere about it. The witness himself heaved the lead, when making the soundings, and gave the admea-

Witness went, with five or six others, to wit, Mr. Dunston, Parker, White, Captain Caldwell, with two sailors, in a yawl, to make the examination; and a line was thrown on the island side of the wreck, and seven fathom water found; the line was thrown on what was believed to be the wreck, and six fathom water was found. About 15 or 20 feet from the wreck to the bar soundings were again taken, and 6½ fathom water was found. Then witness proceeded to sound a few feet higher up the river, the same side of the wreck with the other soundings, and found 6½ fathom water. Witness then proceeded at right angles, directly from the wreck to the bar, measuring about 100 yards, sounded again, and found 6½ fathom water. Then measured 100 yards further towards the bar, and there found 5½ fathoms; then went 100 yards further in the same line towards the bar, and found 5½ fathoms; thence, on the same line, measured 100 yards further towards the bar, and there found 3 fathoms and a foot water; thence, on the same line, further towards the bar, about 30 or 40 yards, as far as the willows, and found 2 fathoms and four feet water. Witness then returned to the wreck, and started at right angles for the island shore. From wreck, 100 yards, measured 7 fathoms 4 feet; 100 yards further, measured 8 fathoms 3 feet; thence, 100 yards further, measured 9 fathoms 4 feet; thence, 100 yards further, measured 9 fathoms 5 feet; thence, 100 yards further, measured 5 fathoms 3 feet; thence, 40 or 50 yards further, when witness got to shore, and did not sound, being a bluff bank.

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Signed, G. W. PARKER.

The above witnesses subscribed their names to their several depositions in my presence, this 22d day of March, 1844.

Signed, N. R. JENNINGS, *Clerk*.

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surement of the depth of the water to Mr. Woodburne and Mr. Parker, who put them down on paper as often as witness heaved the lead, and announced the depth. The deepest water, witness states, was on the island side of the wreck, and the water became deeper and deeper from the wreck to the island, to the distance of 400 yards, at which it was 59 feet in depth. On the outside of the wreck witness found 42 feet water, to wit, the island side; and on the bar side, immediately by the wreck, 30 feet water. At a distance of 100 yards from the wreck, across in the direction of the willows, witness found 33 feet water, as well as he recollects; the depth of the water decreased as they approached the willows; and at the willows 16 feet water was found. The channel of the river is on the island side of the wreck. The wreck lies in a crooked part of the river. The island is on the bend side. Witness found 40 feet water about 60 yards from the island shore; and it was deep water close by that shore. The island shore was a bluff one. There were some snags about the wreck; one about 100 yards below, a little further from the bar than the wreck itself. The other snags witness has already described in his deposition before Recorder Baldwin; and that he has nothing further to add.

Witness states, that he has been a pilot for a long time, and upon that river; and that the wreck of the Buckeye is in the position, or near about it, which boats usually take on ascending the river; it is the course that he himself would have taken. Witness states that it is usual for boats ascending so to change their course as to suit the shape of the bar, in going around that bar particularly. Witness states that the only alteration he would make in the deposition given by him before Recorder Baldwin is, that the wreck is 60 yards nearer the island shore than he allowed it to be when making the deposition then.

Cross-examined.

States, that on the 1st March, the river commenced falling, and continued to fall until the 8th or 9th of March, when it began to rise; and he thinks that it is now about the same stage as it was on the 1st of March. The river at the point where the wreck is, across from the island shore to the willows, *is* about 1,000 yards in width. The distance from the wreck across to the willows witness thinks is about four hundred and sixty or seventy-odd yards. The river at that place is not very crooked; it is only a middling bend. A boat ascending the river would be entirely out of her place on the island side. If the Buckeye reached the place where she is now sunk, by crossing over from the island shore at an angle of 45 degrees, she would be out of her place; that is to say, she would have been running out of her place.

Examination in chief resumed.

A boat after entering the lower mouth of Old river ought to keep a little nearer the island for about 300 yards, then gradually to incline to the bar to the point above, at the place where the Buckeye now lies.

Cross-examined.

Witness states, that from the first entrance in the mouth of Old river

to the place where the Buckeye now lies, the distance is from a mile and a quarter to a mile and a half.

Signed, TIMOTHY DUSTIN.

Robert E. Klady, witness for the libellants, being sworn, deposes—[The counsel for the respondents reserves his exception to the competency of this witness, upon the ground of his being interested, and being the pilot at the wheel at the time of the collision between the boats.]—That he was a pilot on the Buckeye before her collision with the De Soto in Old river, on the 1st March, 1844; and that he was at the wheel at the time of the collision. States that, upon entering the mouth of Old river, at the then stage of water, he always ran up as near the middle of the channel as possible, for the distance of 3 or 4 hundred yards; that he then gradually inclines around towards the bar, up to the point where the wreck now lies, keeping in view the snags, so as to keep clear of them on the outside, (by the outside, he means, towards the bend.)

Upon the night of the collision witness, in piloting, pursued the course above described, except that he went upon the inside of some of the snags, still nearer the willows than on the course described. Witness went inside of the snags, that is nearer to the willows, on the night of the collision, for the reason that he saw a boat descending, and that he wished to keep as near to the bar as he deemed prudent, to give the descending boat more room. In ascending the river, witness found it necessary to change the direction of the boat, so as to accommodate her course to the shape of the bar. Witness first saw the De Soto at about the distance of $\frac{3}{4}$ of a mile. Witness was, at the time, running for a landmark, being a point of high timber on the willow shore. Witness, feeling confident in the correctness of his own position, paid no further attention to the descending boat, as he had seen her sky lights shining on her starboard side, which caused witness to believe that she was coming down directly to the bend. The De Soto then passed behind the starboard chimney of the Buckeye, and was invisible, in consequence, to witness, in the position he then was, and continued invisible to witness for some moments, until he began to feel uneasy as to what detained her from view. Witness then shoved the sash of his pilot house aside, to see where she was, and discovered her at the distance of about 80 or 100 yards, running directly for the Buckeye. Witness immediately spoke to the mate, who had charge of the watch at the time on deck, and observed to him that he believed that boat intended running into them; the mate replied, he reckoned not, and immediately rang the alarm bell, commanding witness to stop the Buckeye. Witness, upon which, rung her bell, and her engine was accordingly stopped; the mate further commanding him to back her, upon which witness rung the bell, and she backed; that is to say the engine commenced backing in a few moments after the collision occurred. Witness cannot state how many revolutions were made, thinks three or four. As the boats came together witness rung the bell to stop the Buckeye, to prevent the boats from separating, as he knew the Buckeye was bound to sink. At the time

of the collision the De Soto was coming full upon the bow of the Buckeye, making not quite a right angle. The De Soto's bow run right upon the starboard bow of the Buckeye, a little forward of the hatch; the Buckeye's head was then pointing directly up stream, for the point of timber above referred to, which was directly up stream. Directly after the collision the De Soto's stern was swung round, and the head of both boats then pointed up stream; the Buckeye nearest the bar. After the confusion was over, and every thing became calm, the stern of the De Soto was rather quartering up stream, nearly across the river, in which course she drifted across to the island side, with the cabin of the Buckeye, the hull of that boat having sunk within a very short time after the collision; witness thinks about 20 or 30 seconds. The concussion appeared to be with considerable force. Witness thinks that he saw the jack staff of the De Soto near the bell post of the Buckeye. Witness states that, as soon as the hull of the Buckeye was separated from her cabin, he was engaged in getting out persons from the cabin, to save them. Witness states that some five seconds after the alarm bell of the Buckeye was rung, the De Soto answered it. When witness pilots a boat down the river, he always runs into the bend; and when he meets an ascending boat he runs as close into the bend as possible, so as to give her the largest space of the river. Witness was certain of the correctness of his position, as above stated, from the fact that he was running as near to the bar as it was prudent for him to do, leaving the De Soto a distance of five hundred yards and upwards in width, being the largest half of the river. Witness states that, when ascending, he never went nearer the bar than upon that occasion, not even in day light.

Cross-examination. Witness states that, when he first discovered the De Soto, as above stated, the Buckeye was no nearer the willows than where her wreck now lies, and that she might have been a little further off, as he was shaping the bar around. When he first discovered the De Soto, the sash of the pilot house of the Buckeye was open on the larboard side, and closed on the starboard, and witness opened the sash on the starboard side to see where the De Soto was, as before stated, when he then discovered her at a distance of about 80 or 100 yards. Witness cannot state what depth of water the Buckeye was drawing at the time; that she was heavily laden; never noticed how much water she did draw; thinks that the tonnage of the Buckeye is about 160 or 170 tons, but does not know it; reckons that the Buckeye, at the time, was drawing about seven feet water. Witness states that the mate was below when they were at Routh's plantation, but when they entered Old river, the mate was above, on the hurricane deck, of which he is certain; thinks that he was about a mile or ¾ of a mile above the point of the island, when he steared for the clump of trees as above stated, he having made around the point of the bar; thinks that about four or five minutes, or perhaps ten minutes, had elapsed from the time he lost sight of the De Soto, as above stated, before he raised the sash to discover where she was; states that it was immediately after raising the sash,

and discovering the boat, that he told the mate that he thought the De Soto would run into her. On the alarm bell being rung, the captain of the Buckeye did not come into the wheel house, not having time to do so. Witness states that he made no change in the direction of the Buckeye from the time he commenced steering for the clump of trees until the collision, except some little to avoid snags, but no change in reference to the De Soto; being so confident in his own course, and so far from the De Soto's course, that he had no apprehensions whatever of any danger from her. States that he had no conversation with the mate previous to the time of his making the remark to him as above stated. States that he had been asleep all the early part of the night, and that he had not seen Capt. Caldwell since supper. Witness's watch commenced about 12 o'clock; that he was up when the Buckeye was at Routh's plantation, and took charge of the wheel when she left there, which was between 2 and 3 o'clock; that he had been up some hour and a half before he took charge of the wheel. Witness had taken no spirits to drink while at Routh's plantation, and that he very rarely drinks any thing. Witness states that he has had charge of a watch, as pilot, for four seasons past; that he was first employed by Capt. Caldwell as a pilot, and the last employed by him in that capacity; that he also was a pilot for Captain Edwards, of the Farmer, for two trips, and also a pilot on the Hannibal, with Captain J. M. Phillips, part of the time, and part of the time with Captain Caldwell, by each of whom, at different times, the said boat was commanded. He was employed as a pilot on the Nashville, with Captain Caldwell, on the Ouachita river, when she sunk; and was at the wheel at the time she sunk. The Nashville sunk at night; she sunk by striking a snag.

(The counsel for the libellants here objected to any testimony given by witness relative to the loss of the Nashville.)

Reserving his objections thereto—

Witness states that he never observed to any one that the tiller ropes of the Buckeye had parted previous to the accident, and that he had never known them to part for the two seasons that he was upon her. Witness discovered no injury done to the bow or stern of the De Soto in consequence of the collision; is not certain whether he looked to see if there was any or not. States that if the Buckeye was leaky witness had never heard of it. Being asked whether he has ever heard any apprehensions expressed concerning the Buckeye as being an old boat, that she would easily sink, answers that he does not know that he ever did; is not certain. States that the headway of the De Soto was not stopped at the time of the collision, nor was the headway of the Buckeye.

Examination in chief resumed. Witness did not go to the wheel at the time his watch commenced, which was at 12 o'clock, for the reason that he was unwell that night. The mate of the Buckeye was on watch at the time of the collision. Witness states that, after the collision, and the De Soto had left the wreck, he remained on the cabin of

the Buckeye to save property, especially the strong box of the boat. That he assisted in getting out three dead bodies, one of which, a child, was sent to Harrisonburg.

Cross-examination resumed. Witness was free of fever at the time he went to the wheel; it had left him about an hour before; he did not mention the fact of his being unwell to the captain.

Signed, ROBERT E. KLADY.

Taken by consent, subject to all legal except.

Signed, R. N. & A. N. OGDEN,
JOHN FINNEY.

United States district court,

Eastern district of Louisiana, clerk's office.

GEORGE H. CALDWELL, master, and owners of the steamer Buckeye, and als.,
vs.
THE STEAMBOAT DE SOTO, Kimball and Reed, owners thereof.

Evidence taken by consent, before the clerk of the court, in the above entitled case, on this the 27th day of March, 1844, to be used in the trial of the said cause.

Charles H. Rollins, witness for the libellants, being sworn, deposes: That his principal business is that of a pilot, engaged in piloting boats on the Ouachita river, and Mississippi rivers, and also upon Old river, where the collision between the steamboat Buckeye and De Soto occurred; he has been piloting vessels on this route for seven years, and considers himself well acquainted with the navigation from the mouth of Red river to the Mississippi. That he has seen Old river at the juncture of the Mississippi during its lowest stage. States that he lay at the mouth of Old river for three days, in the steamer Velocipede, when the mud digger was digging out the mud at the mouth of the said river, which was then dry. He has seen it when there was only four or five feet water on the bar at the mouth.

The map being exhibited to witness, marked A, he states that it is a correct description of the course and direction of the rivers, especially from the mouth of Red river to the Mississippi.

(The counsel for the respondents here objected to the map, marked A, being exhibited to witness, upon the ground that it is a sketch drawn by the counsel for the libellants, and any questions concerning it are of a leading nature.)

Witness states that if he were to draw a map, he would draw one as much like the one exhibited as possible. Witness has no knowledge of the place where the Buckeye was sunk, except from some pieces of timber, having paint on them, sticking out of the water, appearing to be attached to something at the bottom.

Those timbers were the strong pieces of the cabin of a steamboat. Witness saw three or four snags near about the place where the steam-

boat was sunk. Witness states, that the course of a descending boat is to keep the bend, and an ascending boat to keep the bar of Old river. The deepest water is supposed to be in the bend. There is nothing at that part of the river, where the wreck of the Buckeye lies, to prevent a boat from keeping the bend. Witness can't state how far the bar goes out, not having measured it, but that it goes out some distance; boats are sometimes in the habit of running as near 100 or 150 yards from the willows; that he has been, himself, within 100 yards. There are snags at the head of the bar; boats ascending keep nearest the island for some distance, and then turn across towards the bar; there are some snags on the bar; a boat ascending in the night, keeps outside of the snags, near the wreck of the Buckeye, towards the island shore; if a boat is seen coming down, then, the ascending boat keeps closer in, that is, nearer the bar shore; if the ascending boat is on the inside of the said snags, that is, towards the bar, he would consider it safe from collision with a boat descending; that he would not consider a boat heavily laden to be safe running near the bar shore; there would be danger of her snagging herself; there would be greater danger in the night. That recently near the place where the collision occurred, a little below it, witness states, he met a boat ascending, he being on the descending boat; that the ascending boat kept the bar, the descending the bend, which boats passed each other without collision. If the collision took place where the wreck of the Buckeye is, and supposed to be, witness states that the Buckeye was in her proper place, and the De Soto was not. Witness states, that he knows Mr. Klady from character, and that he has the reputation of being a good pilot. Witness states that he knows Mr. McGuire, that he has the reputation of being a good pilot, but has heard it said that his eye-sight was bad at night; that it was the general impression among steamboat men, altho' he had never heard any one person say so.

(The counsel for the respondents here objected to the question and the evidence, so much as refers to hearsay.)

Witness states that the above impression was derived from conversation with steamboat men.

Cross-examined.

States that the conversations referred to concerning Mr. McGuire, have been before the collision; cannot name any particular person that he had the conversation with; and being asked if he knew where such persons lived that he had the conversations with, answers, that he did not say that he had conversations with any one respecting Mr. McGuire's eye-sight; states that he has heard of Mr. Klady as a pilot for 3 or 4 years; that he has heard him spoken of as being a fair pilot; has never known him to be in the employ of any other person than Capt. Caldwell. Witness states, that about the 1st of March, the water in the Mississippi river was at a middling stage, and falling—he means the waters about Old river. Witness, in ascending the river, supposes that he has passed frequently much nearer the willows than where the Buckeye now lies; being on the Dime there, a small boat, drawing about four feet water;

depending very much upon the stage of water, whether an ascending boat would keep near the willows. Being asked if there was 12 feet water at the willows, how much nearer an ascending boat would pass them, than where the wreck of the Buckeye now lies? states that he does not know. Being asked if there was 36 feet water in the river where the said wreck now lies, how much nearer the willows an ascending boat, drawing six or seven feet water, could go with safety, than where the wreck now lies? answers, that he does not know. Being asked if he were on a descending boat, piloting, and about the place where the wreck of the Buckeye now lies, and an ascending boat coming up, on the island shore, whether he would not keep the middle of the river? answers no; that he would keep the bend. Being asked if he knew the law upon the subject? answers, that he does not know the law, but knows what is customary. If the Buckeye reached the point where she now lies, by crossing over from the island shore, she was running out of her course, her true course being on the bar shore. Witness piloted the Elizabeth, drawing five or six feet water, and has gone within where the wreck of the Buckeye now lies, nearer the willow shore, supposes 30 or 40, or may be 50 yards nearer. It is usual, and customary among pilots, when they meet a boat at night, to watch, and keep an eye upon the approaching light until they pass it. Witness states that he went as pilot on the Ouachita trade year before last. Witness being asked if a boat drawing 5 or 7 feet water could be run safely over 12 feet water? answers, that it could if there were no snags; and states that a boat drawing the above depth of water can be run between the snags, near the wreck of the Buckeye and the willow shore, with safety. When at the mouth of Old river, he could run half a mile up, nearest the island, before he could turn across to the bar shore; that he never knew the depth of water on the bar before the collision; that he has never sounded the bar, nor any part of Old river.

Examination in chief resumed.

States that Old river at its mouth is about ½ a mile wide, more or less; the channel is very narrow, the bar coming out some distance; the channel he supposes to be one hundred yards in width.

(Signed) CHARLES H. ROLLINS.

Sworn to and subscribed before me, this 27th day of March, 1844.

(Signed) N. R. JENNINGS, *Clerk*.

Thursday, March 28th 1844.

GEORGE H. CALDWELL, master and owner of Steamboat Buckeye, and als., vs. STEAMBOAT DE SOTO.

Testimony taken by consent of the parties, before the clerk of the U. S. district court.

Witness for the libellants.

J. L. L. Jourdon being sworn, deposes: Witness does not wish his evi-

dence to be considered as that of an established pilot, or to be considered himself as a regular pilot; has, while acting as clerk, stood a regular watch; he being well acquainted with the river they dispensed with a second pilot; witness has often steered a boat between the mouths of Old river and Atchafalya; witness has had an opportunity of seeing the water there at nearly all stages; not being navigable at all times, owing to the bar at Old river, he thinks he has seen that bar ten or twelve feet out of water; witness has examined the map, marked A; a person having a knowledge of the river might get an idea of it from this map, but he does not consider it a correct representation of the river, according to his ideas; there is too sudden a curve on the island shore; when opposite the mouth of the Atchafalaya, coming down, one cannot see out at the mouth of Old river into the Mississippi, owing to the curve in the river, the distance is not too great to see out if the river was straight; he knows there are three snags in the river. Does not know where the hull of the Buckeye now lies; did see some things sticking up, but did not know if they were attached to the hull of the buckeye; those things he saw were in the *vacinity* of the snags in the river. A boat coming down would follow the bend, keeping the snags on her right. A boat going up the river would usually pass near the snags, on the outside towards the island shore. If he saw no boat coming down he would, perhaps, keep near the middle of the river; but if he saw a boat, he would pass near the snags, on the outside of them, and on no account would he go inside of them. In speaking of the snags, he calls the outside towards the island shore, and the inside towards the bar shore. If he were going up, and a boat coming down, he would certainly incline to the bar shore to avoid a collission, and if he got on the inside of the snags, he thinks he would be in his right place to escape collision. If the De Soto and Buckeye came in collision on the inside of the snags, he would consider the De Soto as out of her place, and that the Buckeye had run as far in towards the bar shore as she could, without endangering the vessel on concealed snags, which witness knows are there. He thinks a boat could not go safely so near the bar in the night as in the day time. It is generally known among steamboats, that there is a bar on the outside of the willows on the bar shore, which is a pretty extensive one, the situation of which corresponds with its designation on the map A. He has seen snags on the bar; has seen logs and roots on the bar. Boats running the river are not in the habit of running over the bar.

Cross-examined.

Witness has never been employed by Capt. Caldwell. In saying as he did, on his examination in chief, that upon no account would he go inside of the snags, he wishes to explain, that there are circumstances that would induce him to go inside of the snags; such as, to avoid a collision with a descending boat, or, in the event of the boat taking fire, or having sprung aleak, to run ashore on the bar. Witness has never acted as pilot, except when clerk of a boat; he has stood a watch at the wheel occasionally. Witness is asked, "whether, in saying that if he were going up, and saw a boat coming down, he would certainly

incline to the bar shore to avoid a collision," he does not mean, provided he was running up on the bar shore; and whether this would be the case if he were running up on the island shore, he answers, that, in his opinion, the bar shore is the proper one to run up; and that if he were running up on the island shore, and should see a boat coming down, he would still cross over to the bar shore to get into his proper place, but that he would do so time enough to avoid a collision, that is to say, time enough to get into a proper place on the other side, before the descending boat reached that vicinity of the river; and a boat running up the island shore could see a descending boat at that place, sufficiently far ahead, to be able to cross over to the bar shore, before the descending boat could reach that vicinity of the river; and, if witness was not perfectly satisfied that he would have time to cross over, before the descending boat could meet him in crossing, he would keep close up to the shore on the side which he was running. Witness states that there is plenty of water on the island shore for a boat to run near, and no snags to endanger a boat. Witness states that ascending boats generally enter Old river about the middle, in the channel; and, as there is generally but little current, they continue up near the middle of the river, unless they see a descending boat.

Examination in chief resumed.

Witness states, that, on entering Old river, the channel inclines to the island shore, and is nearer the island shore. When there is none, or but little current, a boat entering Old river would keep near the channel; if there was a current, a boat would incline nearer the bar shore; the dotted line is a fair representation of the usual course of a boat ascending. If he was going up the river, and saw a boat coming down at a mile distance, he would think it safe to turn to the bar shore; if, from the position of his boat, he saw he could get on the inside of the snags before the other boat could meet him, he would think it safe to attempt to get there. He never would expect a boat coming down to come into collision with him there. Whatever might be his position in the river, if he thought he could cross over to the bar side before the other vessel could catch him in the crossing, she following the course a vessel ought to follow coming down, that he would cross to the bar shore.

Signed, J. L. L. JOURDAN.

James W. Figg, witness for the libellants, being duly sworn, deposes and says: That he was on the steamer Buckeye, at the time of the collision with the De Soto; he was a deck hand; he was putting freight in the hole at the time of the collision; he was standing at the hatch, and the watchman was lowering down the freight that had been taken in at the Red River Landing, which place was also called Routh's Landing; he heard the alarm-bell of the Buckeye rung, which first attracted his attention; he stepped out on the starboard side of the vessel, and saw another boat coming down, which began to ring her alarm-bell about the time he got out there; the boats were then about seventy-five or

eighty yards apart; he heard the bell ring to back the Buckeye, but does not know whether she backed or not, as he was alarmed at the time; the alarm-bell, the stopping-bell, and the bell to back, were rung one after the other, as quick, witness thinks, as they could well have been rung; he stood there until he saw they would come into collision, then he stepped back to the forward part of the boilers; the De Soto apparently was approaching very fast, as a short time after he saw her run into the Buckeye; the De Soto seemed quartering down towards the Buckeye; she struck the Buckeye about half-way between the forward hatch and the jack-staff; she cut through the guards and into the hull; how far, witness, however, cannot state; De Soto struck her on the starboard side; after she struck, the two boats swung side by side, heads up stream; the Buckeye sunk as quick as she could.

Cross-examination.

States that, at the time when he heard the alarm-bell, the Buckeye was not running in the island shore; witness states that he is now a deck hand on board the steamer Governor Morehead; Captain Caldwell employed him to go in that boat, immediately after the loss of the Buckeye, and directly after he came down here; Captain Caldwell took command of the Gov. Morehead immediately after the loss of the Buckeye, and on her first trip going up to Ouachita, she ran aground in the Mississippi, some where above Baton Rouge; then Captain Caldwell left her, and continued up to Ouachita in the Fort Towson; witness, being asked whether Capt. Caldwell is not now in the command of the Gov. Morehead, answers, he does not know; when asked if he is not now in the employ of Captain Caldwell, answered, yes, as a deck hand on the Gov. Morehead; witness saw no lead thrown on the Buckeye on entering Old river; if there had been any lead thrown, he would have known it, because he and his partner were the only persons on watch, of the deck hands; and if the lead had been thrown, it would have been thrown by them; witness paid no attention as to which side the Buckeye was running, until he heard the alarm-bell rung.

(Signed) JAMES W. FIGG.

Joseph Martin, witness for the libellants, being duly sworn, deposeth and says: That he was a deck hand on board the Buckeye, at the time of the collision with the De Soto; witness was in the hole, and heard the alarm-bell of the Buckeye rung, and in a very short time afterwards he heard the bell of the De Soto; immediately after hearing that bell, the collision took place; witness heard but the two bells; he did not hear the stopping or engine bell; immediately after the collision, he attempted to get out of the hole, and found two horses had been knocked down the hatch by the force of the collision; he then attempted to get out by the after-hatch, and found he could not; witness did not go to the after-hatch, but remembered before he got there that it was blocked up; he then returned to the forward-hatch, and found the horses laying on the side; jumped on one of them and got out; soon as he got out, the mate of the Buckeye hollowed to him to throw a line to the De

Soto, but the lines and everything on the forecastle had been knocked overboard by the force of the collision; by this time the water was running over the guards of the Buckeye; witness escaped on the De Soto; when witness first got on board the De Soto, the larboard wheel of the De Soto was backing; the two boats were not fastened in any way; there was no sounding on going over the bar at the mouth of Old river; if there had been, he would have known it; the jar of the collision was so great, that when witness was in the hole he was knocked down, and fell across the vessel.

(Signed) JOSEPH MARTIN.

Sworn to and subscribed by the several deponents to their respective testimony, this 28th day of March, 1844.

(Signed) N. R. JENNINGS, *Clerk*.

March 29th, 1844.

George Sweeny, witness for the libellants, being duly sworn, deposeth and says: States that he is a pilot, and has been so for some six or eight years; he considers himself tolerably well acquainted with that section of Old river from the mouth of Red river to the Mississippi; he has run on that section of the river for some six or seven years; from his knowledge of the river, he thinks the map A to be a fair representation of Old river; he has seen some snags near the position where witness was told the Buckeye lay; he saw nothing above water indicating the position of the Buckeye; he supposes the distance where witness saw the snags to be about three quarters of a mile, or perhaps a little more, from the mouth of Old river; witness thinks the snags to be about half way from the mouth of Old river to the point above; a boat, coming down the river, generally follows the bend of the river, and when she crosses from it, it is to go into the deepest water, which sometimes is not in the bend; a boat, in going up, generally endeavors to keep in the slack water, which is generally to be found on the bar; witness has been up the river but once this year, on which occasion he ran his boat inside of the snags, close to them; witness being asked if the collision of the Buckeye and De Soto took place inside of the snags, which boat was in her place, and which was not, answered, he does not know; that they both had plenty of water there. Witness further states, that he does not like to give an opinion as to who was right or wrong, but if he was asked what he should do, then he would answer, if witness was coming down the river, he would pass the snags towards the island shore. Witness says, that in coming down the river, he should run his boat about one hundred to a hundred and fifty yards outside of the snags; the line on the map representing the deepest water curves more towards the island shore than he is in the habit of running his boat; a descending boat would make a long crossing from the Atchafalaya side, at the point of trees, as represented on the map, to the island shore, thereby running about one hundred and fifty yards outside of the snags; if witness was going up the river, and was outside of the snags, he would not expect a descending boat to run into him

when in that position; he would consider a descending boat out of her position, if such a collision should take place there.

Cross-examined.

Witness would not think that a descending boat was in her right place, if in the middle of the river, except in the Mississippi or Old river, in which rivers he would consider her pretty near her right place; witness is in the habit of running down near the middle of the rivers, a little towards the bends. Being asked if he is acquainted with the soundings on the bar of Old river, answered, that he is not; being asked how often he has run up the river alongside of the bar, answered, only once in the last two years, which was about three weeks ago, and prior to two years ago. He has very frequently run up Old river on that side of the island on which the collision took place, but whether he run up on the island shore, or the bar shore, he cannot recollect; he had no choice of sides, the water being slack, and he generally took the shortest distance.

Witness being asked, according to his experience as a pilot, whether, if he were running up Old river, from the lower mouth on the island shore, and should see a boat above him descending, he would consider it prudent to attempt to cross over to the opposite shore, he answers, that it is his rule, when he sees a boat descending at night, to keep to the shore on which he is running, and never to attempt to cross until the descending boat passes him; the witness means by this, not to say, that if he should see a boat six or seven miles off, but if he should see one so near as to endanger a collision in crossing. A boat ascending on the island side, after going up about a quarter of a mile, could easily see a boat descending at the point marked "tall trees" on the map A; he could not see, he thinks, a boat at said point until he had ascended about a quarter of a mile. At a quarter of a mile from the mouth of Old river, an ascending boat could see a descending boat about three miles; at a distance of half a mile below the snags, an ascending boat, on the island side, could plainly see a descending boat as far as the point marked "tall trees."

"Examination in chief resumed."

Witness states, that, in that part of his testimony wherein he states that the map A is a fair representation of Old river, he would further state, that the bend of the river, as represented on the map, is not so great as it should be from the mouth of the Atchafalaya. Witness thinks that an ascending boat would have to be nearly opposite the snags, close on the island shore, to see a descending boat in the bend below the mouth of the Atchafalaya. If witness was ascending, and was to see a boat coming down, he would incline to the bar shore to avoid her; if he was in the bend he would not cross over, unless he thought he could reach the bar shore before the descending boat could catch him in crossing; and if he had any doubt about it, he would remain where he was. As a general rule, if witness was certain he could cross over

to the bar shore before the descending boat would catch him in crossing, he would cross over; he would not expect that a descending boat would come into collision with a *descending* boat, if the latter had crossed over to the bar side. It is necessary, in very low water, for an ascending boat to keep close into the island shore on entering Old river, there being very shoal water on the bar side, the bar being sometimes dry; and the bar extends out some considerable distance.

Signed, GEORGE SWEENY.

April 3d, 1844.

H. Philiol, witness for libellants, being duly sworn, deposes and says: That he was on board of the steamer Buckeye at the time of the collision with the De Soto; he was second clerk on board. The Buckeye and De Soto were running in different trades—one in the Ouachita and the other the Red river. There was no bad feeling, as witness knows of, between the officers of the two boats before the collision. At the time the collision took place witness was up, having got up at Routh's landing, and remained up until the collision took place. Does not know the position of the two boats. The bell of the Buckeye rung first; at that time he and Captain Caldwell were setting in the social hall, in company with John D. Irvin. As soon as the alarm bell of the Buckeye was heard, Capt. Caldwell jumped up and ran out on the larboard side of the boat. Witness remained setting until he heard the bell of the De Soto, he then ran out on the starboard side, knowing something was the matter, from the fact of both bells ringing; he looked out, and perceived the De Soto about twenty-five or thirty yards off, coming towards them; he thought she would strike the Buckeye, from the fact of her coming so fast, and being so near, that it would be impossible to stop her before she would strike the Buckeye. The De Soto was approaching the Buckeye at an angle of about sixty degrees. When witness, seeing her approach in this manner, ran through the social hall to the boiler deck, to see what was the damage done, but she struck before he got there. She struck the starboard side of the Buckeye, about opposite the forehead hatch. When witness got on the boiler deck, he ran to the railing and looked over, and saw that the Buckeye was sinking. Witness cannot say whether the Buckeye was backing or not, he does not recollect to have heard anything of it. Immediately after the alarm bell of the Buckeye rang, the alarm bell of the De Soto rang. The Buckeye was generally in the habit of carrying signal lights at night. The Buckeye, witness thinks, had her usual complement of officers and men; there was a captain's mate, engineers, pilots, clerks, stewards, and crew, there being a sufficient number to run the vessel. The first time witness saw Captain Caldwell after the collision, was on board the De Soto, which was some time after the collision.

Cross-examined.

Mr. Smith, the first clerk and part owner of the boat, was in bed at the moment of the collision; of this witness is positive and certain.

Several of the books from the clerk's office were taken out the next morning by Mr. Smith, and others, by cutting a hole in the office, and were put on the De Soto and brought to the city. Witness was drying them on the hurricane deck of the De Soto; Captain Caldwell saw them on the boiler decks of the De Soto; witness asked him what he should do with them, and Capt. Caldwell told witness to bring them to New Orleans. The only book of the boat which he can specify as not having been found and brought to the city, was the crew book. A game of cards was going on about twelve feet from the door of the social hall in the cabin; does not think Capt. Caldwell was playing that night, or on that trip. Witness took the books of the Buckeye and carried them up to Harrisonburg. Witness was about to take the books with him and deliver them to Mr. Smith—had just taken them off the De Soto on to the Elizabeth—when he met Captain Caldwell on that boat, and told him he had the books of the Buckeye, and was about carrying them up to Mr. Smith, and Capt. Caldwell said it was all well. This was about two days after the collision.

Examination in chief resumed.

Witness is not positive that among the books saved that the passenger's book was among them; he does not recollect to have seen it. Witness says, all that he knows of Mr. Smith being in bed was this, that he was waked up by Capt. Caldwell at Routh's landing, that he and Mr. Smith slept in the same state-room, and that he left Mr. Smith; that he remained in the cabin, and did not see Mr. Smith once from the time he left Routh's landing until after the collision; that he does not know at what time Mr. Smith did get up.

Cross-examination resumed.

Witness being asked if he does not know that the collision was occasioned by the bad management or improper conduct of the Buckeye, answered, no, that he does not think it was. He is not now in the employment of Capt. Caldwell. Has always heard Mr. Klady spoken of as being an excellent pilot.

Signed, H. FILHIOL.

April 16*th*, 1844.

George Pilcher, witness for the libellants, being duly sworn, states, that he saw the De Soto about 11 o'clock, A. M., of the day upon which the collision occurred with the Buckeye and the De Soto. States that he did not examine the De Soto very particularly; he saw, however, some marks of damage on her starboard side, about five feet from her bow, viz., some paint knocked off; that he saw the carpenters working upon that side repairing her—they appeared to be wedging under her guards, about five feet from her bow, on her starboard side; by the starboard witness means the right side. Witness looked at the boat all around, but saw no damage on the larboard side.

Signed, GEORGE PILCHER.

Joseph B. Hicks, a witness for the libellants, being sworn, states, that he lives just above the mouth of Old river, at what is called the Red River Landing. Witness knows where the wreck of the Buckeye lies, from some timbers sticking up at the place, and also from the soundings taken. Witness has been acquainted with what is called Old river for twelve years, having been on many boats passing there, and seen a great many. States that the hull of the Buckeye is at or near the place where boats usually run in navigating that river, in going up. The boats coming down the river usually run nearer the bend than where the Buckeye now lies. He never saw a boat descending the river run in the course where the Buckeye now lies since the bar has been made. That bar is increasing every year. Boats, upon entering the mouth of Old river going up, generally bear towards the island, circling around the bar nearest the island shore. Witness never saw boats running over that bar. Boats generally, when ascending, beat near the island shore from a half to three-quarters of a mile, they then strike across for the left hand point, and the Buckeye lies under that left hand point, on the line that boats usually pursue bearing to that point in crossing, or near that line. Witness has never seen but one boat running nearer the bar than where the Buckeye now lies, and that boat is commanded by Captain Morgan, who knows the bar intimately, and where the snags lie. Witness knows that there are snags on the bar, having seen them there. Witness says that it would not be prudent for boats to run over that bar at night; he does not think he ever saw more than one boat in twenty, either night or day, run nearer the bar than where the Buckeye now lies. Witness supposes that the reason why, when boats entering the mouth of Old river bear towards the island side, is because the water is deeper there, and to keep off the bar. Witness states there never is a very strong current in that river, but witness observed the river Sunday morning after the accident, and the current was more than usually strong. Witness saw the De Soto after the collision, and observed that the guards upon her starboard were fractured six or eight feet, perhaps more, from the bow, and some of the guard beems *seem* to be raised, perhaps an inch or more. The De Soto appeared to be heavily laden at the time.

Cross-examined.

States that, by the starboard, he means the right hand side. Witness saw nothing fractured on the larboard side of the De Soto, but observed only some paint knocked off about three feet aft of the stern. States that he did not examine it very particularly.

Examination in chief resumed.

States that the point to which they steer, after leaving the island side of the river, is about two miles and a half, or perhaps more, from the point of the island at the mouth of Old river.

The wreck of the Buckeye, witness supposes, is about ¾ of a mile from the point she was making to.

Signed, J. B. HICKS.

Joseph Cummings, witness for the libellants, being sworn, states, that he knows where the Buckeye now lies, and that he is a pilot by profession; that for the last six years he has been piloting on the river where the Buckeye is sunk. Witness states that he lived at the mouth of the Atchafalaya river, on Old river, in the year 1839 or '40, and that he did observe the ebb and flow of the tide there; witness' attention was particularly directed to that fact from conversations on the subject. Witness states that a boat ascending, before entering the mouth of Old river, runs nearest the willows; and, immediately on entering the mouth, runs nearer the island for some 400 yards, and then bears across to the willow shore, and continuing to run that shore to the next left hand point; if at night, at the place where the Buckeye , and if in the day, a little nearer the willows. If witness were upon an ascending boat, and saw a boat coming down, he would persue about the course just discribed by him. A boat coming down would usually pass between where the Buckeye now lies and the island, at a distance of about two or three hundred yards from where the Buckeye lies; and if a boat was coming up, the course of the descending boat would be still nearer the island. Witness states that the Buckeye was nearer her place than the De Soto, if the accident happened where the Buckeye now lies; and if he, piloting a boat, had been run into at that place, he would have thought that he was in his proper position. Whenever witness meets a boat, his endeavour always is to get in his proper place. If witness were out of his place when meeting a boat, he would endeavour to get into his right place, if he thought he could do so before a collission. Witness states that, if he were in his right place, he would keep it, whether a collission occurred or not; that, if he were to quit his right place, he would as likely get into a collission as by keeping it. Witness knows the De Soto; and being asked how many revolutions of the engine could be required to stop that boat running down stream, if she were *stoped* suddenly, and the engine commenced backing, answers, that he is unable to answer the question. Being asked how many revolutions, in his opinion, it would take to stop her, answers, it would take a dozen or nine.

Cross-examined.

Being asked, whether, if he were on a boat ascending Old river, on the island side, and should see a boat above him descending, he would not consider it the part of prudence to continue on the island side until the descending boat had passed him, answers, that it would depend upon the distance the two boats were apart; if they were a mile apart, answers, that he would, in that case, cross over to the willow bar; but if half a mile apart, answers, he would still cross over, the crossing not being over two or three hundred yards. What if a quarter of a mile apart, would he not then consider it more prudent to keep on the island shore, answers, that perhaps then he might, that distance being rather too near to justify an attempt to cross.

Witness being asked, if he were upon an ascending boat meeting a

descending boat, he would not consider it his duty, as a prudent pilot, to keep the descending boat in view until she had passed, answers, that he would pay attention to the course that he ought to pursue, and endeavour to keep his boat in her right place, and not occupy himself with the descending boat. Witness being asked whether, however, in that situation, he would not consider it very imprudent in him, or any pilot, to lose sight entirely of the descending boat until she had passed, answers, that he would consider it very curious if he should lose sight of her entirely; and does not know how it could happen, unless she had passed. Witness states that he is now a pilot on the Robert T. Lytle.

Examination in chief resumed.

Witness states, that what he says about ascending boats would apply equally to descending boats; he states that there is a point where boats meet each other; that one passes behind the *chimnes* of the other, and is so concealed from the pilot. States that, at that point, one boat might approach very near the other without being perceived, if steered directly on it, and the pilot might suppose she had passed.

Signed, JOSEPH CUMMINGS.

April 17*th*, 1844.

Hypolite Filiol, witness for the libellant, being sworn, states, that the steamer Buckeye was owned by Captain Caldwell and Mr. Smith; that he, witness, was second clerk on the Buckeye at the time she was sunk. Witness does not know the exact value of the freight on board that boat at the time she was sunk, nor what the amount of her passage money was, but supposes that it was between $2,500 and $3,000 in value. The Buckeye was going to Camden, on the Ouachita river, in Arkansas, at the time of the collission. Witness knows the amount and the estimated value of the freight on board, from the fact that he, as second clerk, received it. The Buckeye, witness states, on the trip before she was sunk, brought down a good load of cotton, and that she had brought down good loads of cotton on previous trips. The Buckeye was loaded with cotton in the like manner that boats usually are loaded, and the cotton was stowed on her guards. Witness knows that there had been repairs put on the Buckeye by Capt. Caldwell, but he does not know to what amount. There was a space between the cotton and the jackstaff on the De Soto, which, as witness thinks, was about fifteen feet. Witness saw the De Soto run into the Buckeye, and that she ran into her nearly as far in as the capstan, which is in the middle of the boat. Witness states that he was examined in this case some days ago. Witness states that the width of the guards of the Buckeye, at the place of collission, was about five or six feet.

Cross-examined.

Witness states that he was perfectly cool during the whole of the transaction, of which he has above spoken, as to the Buckeye and De Soto, and that he is perfectly sure that he saw the collission, as described. The Buckeye sunk almost immediately after the collission. Witness

states that he did not see the actual collission between the two boats; witness was about fifteen feet from the place, where he run to see the collission. Witness states that the Buckeye is at present indebted to him in the sum of $35, or about that; that he could get the amount by applying to Mr. Barrett, but not having stood in need of the money, he has not applied for it.

Signed, H. FILHIOL.

Silas G. McClure, witness for the libellants, being sworn, states that he saw a stanchion, or some part of a steamboat, sticking up at the place which was pointed out to witness as being where the wreck of the Buckeye lies. He knows, also, something of the snags which are in the neighborhood of this stanchion, where the wreck lies. These snags are in the middle of the river, about a mile from the mouth. He did not notice particularly, nor does he recollect whether these snags are to the right or left of the hull of the Buckeye. Witness has no particular way of running Old river; but, when he meets a boat about that place, he turns to the bar side, when he is on the ascending boat. When on a descending boat, he keeps nearer to the bend shore, or the middle of the river; when upon a descending boat, (and referring to a map at the time,) witness states that he keeps in the middle of the river until he reaches the first point on the left hand side ascending from the foot of the island, and he would then incline towards the bend, unless he met a boat coming up on the bend shore, and then he would keep right straight down the middle of the river, and let the boat ascending run that shore, if she chose. The general custom for steamboating men is for the descending boat to keep the bend, and the ascending boat the bar; this rule is particularly observed, unless they have stoppages to make to interfere with it. A boat running between the snags and the willow shore, going up, would be in her proper course; if witness met a descending boat he would incline nearer the willow shore probably. Witness has passed up in a high stage of water close to the willows, altho' it is by no means common.

Cross-examined.

States, that point pointed out to him as the place where the Buckeye lies, appeared to witness very nearly about the middle of the river, a little nearer the point shore than the bend. Witness states, that, on ascending the Old river, from the mouth, and running up on the bar shore, should he meet a boat descending, and above him, near the middle of the river, he would run close to the bar shore, probably by one hundred yards more than where the Buckeye now lies, and perhaps by half the distance between the spot and the willow bar. If witness were in a boat running up on the island shore, and he were to meet a descending boat, he would continue to run that shore until the descending boat had passed, unless he considered that he had ample time to make his crossing without danger of collission; on that subject he would run no risk. He would consider himself safe as long as he kept upon the island shore very close, there being plenty of water very close on that

side for thirty, forty, or fifty yards. In that case he would consider it his duty, as a prudent pilot, to watch the course of the descending boat until she had passed him; but that his eye might be occasionally turned to the shore; but that he would not lose sight, for many moments, of the descending boat, and that he would always know where she was until she had passed him; and that he certainly would be more particular, under these circumstances, in watching her by night than by day; and that he would consider it exceedingly dangerous to lose sight of her for many minutes or moments, unless when she got very near; and then he would watch her still more closely.

Examination in chief resumed.

Witness states that, in making the answers above given, he had reference to the boat being on the island shore; that, being on the island shore, he would be more particular than if he were on the other shore, from the fact that he would consider that he was out of his place. Witness states that if he were out of his place, and met a descending boat, he would endeavor to get into his proper place, if he thought he could do so without running the risk of a collision. Witness would make his calculations that the descending boat would keep her regular course. Witness would consider the same vigilance necessary as well upon a boat ascending as upon a boat descending.

Signed, S. G. McCLURE.

April 18*th*, 1844.

Washington Bery, witness for the libellants, being sworn, states: That he is engineer of a steamboat by profession, and that he has been employed in that capacity upon steamboats navigating Old river; and that he has been employed steadily upon vessels navigating that river for the last five years. He considers himself well acquainted with the navigation about the mouth of Old river.

Before entering the mouth of Old river there is a little clump of willows, or rather a bar covered with willows, and the course of a steamboat entering this river would be nearer this bar than the island; she then bears over to the island, and keeps that a short distance, about half a mile or more; she then holds over to the bar side, steering for some tall timber on the left hand side, and this course she ought to keep until she gets near to the point. Witness knows where the hull of the Buckeye is, as he believes, from the fact of seeing a string piece, attached to that boat, sticking out of the water at the place where the Buckeye is represented to have been sunk. He noticed some snags in the vicinity of the said wreck. The wreck lies on the bar side of the snags, or the inside. Witness has passed on the outside of those snags, as far *of* as fifty or one hundred yards, and has passed as often on the outside as the inside. The hull of the Buckeye, or her wreck, is as near the bar as boats generally run, and he considers her as near the bar as he has ever run on boats, until since this collision; pilots nor steamboat men were not aware of the depth of water upon this bar until after the collision. Witness says

that a descending boat would not be in her proper place if she should be where the Buckeye now lies. She ought to have been on the island side of the Buckeye; some eighty or one hundred yards, or two hundred yards would not have hurt her. Witness states that he means one hundred and eighty yards, or two hundred yards, and not eighty or one hundred yards, as stated above. That he was misapprehended in his evidence being so taken down. Witness states that the descending boat ought to follow the shape of the bend; in this course she would be nearest the island shore. Witness states that if he saw a descending boat, whatever might be the position of his boat, he would think himself safe on the inside of those snags, if he could get to that position before a collision took place. Witness knows the De Soto. Witness being asked how many revolutions of the wheel it would take to stop a vessel of the size of the De Soto, coming down stream loaded with cotton, which boat stopped suddenly and commenced backing, that it would take at least eight. How many strokes it would take to stop her still, answers at least eight, from eight to fifteen, and that some boats were much more easily stopped than others. Witness has conversed with Mr. Glascock, whose evidence has already been given in this cause, and which evidence he has heard read. That he has conversed with said Glascock before giving that evidence, and since the collision. Witness, during this conversation, asked Mr. Glascock if he had lost any thing on the Buckeye; his answer was, that he had lost nothing of any account; that he had lost a barrel of flour, and keg of rice, and he wondered how it had got on the Buckeye, since he had directed it to be put on the Joe Nichols. Witness being asked if he knows the general character of Glascock, answers that he is some little acquainted with his general character; and being asked what was his character for veracity, answers that he was considered a pretty big liar on Black river, where he lives.

Cross-examined.

Witness being asked, did he mean to say, in speaking of Mr. Glascock, that he is not worthy of belief, when testifying under oath, answers, that it would be hard for him to say that he would not believe Mr. Glascock under oath; but, agreeably to his testimony, which he has read here to-day, he would have to doubt his word, and his only reason for saying so is from the variance of the statement made to witness of what he, Glascock, had lost, and the statement he made under oath of that loss, and also from his character, on Black river, of being a big liar. Witness states that he does not know much about Mr. Glascock. Witness had not had much personal acquaintance with Mr. Glascock, although he has known him for the last four or five years; he has never lived in the same community nor parish with him. Witness being asked if he has any knowledge of the estimation in which Mr. Glascock is held by the persons residing in his neighborhood, answers, that he has some little knowledge of what people think of him on the river, but that he does not know what they think of him back in the country. Being asked when, having heard these people speak of Mr. Glascock as

side for thirty, forty, or fifty yards. In that case he would consider it his duty, as a prudent pilot, to watch the course of the descending boat until she had passed him; but that his eye might be occasionally turned to the shore; but that he would not lose sight, for many moments, of the descending boat, and that he would always know where she was until she had passed him; and that he certainly would be more particular, under these circumstances, in watching her by night than by day; and that he would consider it exceedingly dangerous to lose sight of her for many minutes or moments, unless when she got very near; and then he would watch her still more closely.

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Cross-examined.

Witness being asked, did he mean to say, in speaking of Mr. Glascock, that he is not worthy of belief, when testifying under oath, answers, that it would be hard for him to say that he would not believe Mr. Glascock under oath; but, agreeably to his testimony, which he has read here to-day, he would have to doubt his word, and his only reason for saying so is from the variance of the statement made to witness of what he, Glascock, had lost, and the statement he made under oath of that loss, and also from his character, on Black river, of being a big liar. Witness states that he does not know much about Mr. Glascock. Witness had not had much personal acquaintance with Mr. Glascock, although he has known him for the last four or five years; he has never lived in the same community nor parish with him. Witness being asked if he has any knowledge of the estimation in which Mr. Glascock is held by the persons residing in his neighborhood, answers, that he has some little knowledge of what people think of him on the river, but that he does not know what they think of him back in the country. Being asked when, having heard these people speak of Mr. Glascock as

a big liar, he understood them to mean that he was a base, dishonest man, or was one fond of joking and telling extravagant stories in sport; answers, that he never understood or heard any one to speak of him as a dishonest man. There is one circumstance which witness will mention, "that Mr. Glascock had told him a pretty extravagant story about some charitable act that he had performed." Witness was afterwards relating it to some acquaintances, who he presumed were friends of Glascock, on Black river; one of them asked witness who told him this, and on witness saying Glascock, one of them said, why would you believe him, he is the d—dest liar on Black river; there was no anger indicated in the expression, the conversation was a jocose one. Witness's relations since that with Mr. Glascock have been of a friendly, respectful, and kind character. Witness being asked if, from his knowledge of Mr. Glascock's character, he would not believe a statement made by him in a court of justice, under the solemnity of an oath, answers, that he should be compelled to believe him in a civil case, but not in a criminal case, or in a case against himself. Witness states that the time when Glascock conversed with him about what he lost on the Buckeye, was immediately after the loss of the Buckeye, and on board the Joe Nichols, on which boat Glascock was going up a passenger; that was the only conversation that witness had with Glascock about his loss. Being asked whether, in this conversation, he gave a full account of the circumstances of this disaster, says that it was rather before this. That Glascock came on board the Joe Nichols, and sat by the witness, who was at supper; they shook hands, and witness said to him, well, squire, you did not get wet. Glascock replied no, he was second best on board the De Soto. Some little conversation then ensued, in which Glascock gave witness some little account of the collision, how it had happened; when witness asked him if he had lost any thing, to which he replied nothing of account; the articles he mentioned as having lost were a barrel of flour, and a keg of rice; that he had given the clerk of the Josiah Nichols money to bring his supplies, and he did not see how they got on board the Buckeye.

Examination in chief resumed.

Has never heard that Glascock was ever engaged in any capacity on board of a steamboat, either as clerk, master, or hand. That Mr. Glascock is a planter or farmer.

Cross-examination resumed.

States, that in all the other conversations held with Mr. Glascock, were about the collision, and the incidents attending it, but never about his own loss.

Signed, W. BENEY.

Octavius A. Miller, witness for the libellants, being sworn, states: That he has been commanding vessels running on Old river, and that he knows the place where the Buckeye is represented as having been sunk; and that he is reasonably well acquainted with the navigation of

Old river, about its mouth, &c., having navigated there for three years. Witness states that, in navigating Old river, the following has been his course: He holds for the point until he gets within three and five hundred yards of the foot of the island; he then bends to the left, bearing upon the willows, and pursues that course until he clears the mud flat at the mouth of the river. He would tend up the island shore until he could break on the point above to the left; then he would hold for the high timber on the point above the bar, as near as he could. Witness states that from the position of the Buckeye, where she is sunk, which is indicated by a stancheon sticking out, he would rather say that she was in her proper course, making for that point. Witness states that from his own experience and observation, as well as he could judge, that the Buckeye was as near in her proper place as she could be. In coming down with a loaded boat, witness says that he generally takes as near the middle of the river as he can; if there is any difference, he generally bears towards the bend, and, in coming down, he endeavors to leave room for a boat to pass him on either side, to avoid an accident. This is the course that witness has pursued, although he did not know that it is the course of boatmen, but the course that he has pursued since being run over by the Mazeppa. Ascending boats usually take the bar, and the descending boats the bend. Witness, when he came down upon the Elizabeth, on her last trip, that he passed between the Buckeye and the island shore, some two hundred yards from the Buckeye. If he were on a descending boat, and saw a boat coming up that place, he would tend to the bend, very near the island side, so as to give the ascending boat every chance to make the point of tall timbers. Witness being asked if he knows the De Soto, answers that he does; and being asked if a boat like the De Soto, heavily loaded, were coming down stream, with her usual speed, and were to commence backing, how many revolutions of her wheel it would take to stop her still; answers that it is a pretty hard question to answer. That it would take much fewer revolutions to stop her on Old river than on the Mississippi; he would say that it would take from ten to twenty revolutions to stop her on Old river, and not less than twenty he thinks; and on the Mississippi it would take fifteen minutes hard backing.

Cross-examined.

States that, from the position where the Buckeye now lies, she must have been struck in crossing over from the island shore, to the bold point of tall timbers on the bar shore; if she was struck on the starboard side, she must have been getting over to that point as fast as she could, else she would not have been struck.

Signed, O. A. MILLER.

Hiram Wilson, witness for the libellant, being sworn, states that he knows Mr. McGuire, the pilot of the De Soto, having some little acquaintance with him; that he does not know much of his capacity as a pilot, never having employed him. He thinks that he has seen him at the wheel, steering vessels; and thinks, upon one occasion, that he

was at the wheel, from hearing his voice; which occasion was as follows: That, upon the next trip of the De Soto down, after the collision with the Buckeye, witness was going up with his boat; shortly after entering the mouth of Old river, he saw the De Soto coming down, at a distance of from two to three miles, which he knew by her lights. Witness told his pilot to steer for the point, that the De Soto was coming; when she was two or three hundred yards distant, and then about the middle of the river, she rung her bell, which was answered by his bell. His pilot then said, we had better stop her; that the De Soto was coming to us. He replied that it was unnecessary, as she had plenty of room. His pilot stopped her of his own accord, and sung out to the other boat to know where she was going. The reply was to back his, witness' boat. The voice of the person who replied, witness took to be McGuire. At the time of his making this reply, the pilot of the witness' boat had rung his backing bell; but the other boat did not commence backing until both boats had gotten pretty close, or were passing. Witness observed to his pilot to give her the hard end, this being for self-protection. The De Soto having the advantage of his boat, by the latter's position in crossing the river, he thought it was safest to give those instructions to his pilot. The De Soto then passed between his boat and the point, witness' boat being at that time one hundred to one hundred and fifty yards from the willows on the bar. The De Soto passed between his boat and the willows. There was about four or five hundred yards from his boat to the bend shore. Witness considers that the De Soto was out of her place on that occasion; and he thinks that, had it not been for the movements of his boat, and the idea of giving her the hard end, there would have been a collision; that the De Soto, at the time, he thinks, was bearing off, and doing all she could to avoid the collision. The moon was up, about two hours high; also it was cloudy; still he could see to distinguish an object the size of a man across the river. Witness states that, during the trip of the De Soto when the Buckeye was sunk, about the river Bondieu, a part of Red river, the Beeswing met the De Soto, the former going up and the latter coming down, when the De Soto took a point from the Beeswing, which is not customary in the navigation of boats upon Red river. Witness does not know who was then at the wheel. This was a very short point, and they came very near before they saw each other. Witness, upon that occasion, rung the bell of his boat first. The Beeswing was standing pretty far in, near the middle of the river, in order to turn this point; and the De Soto, seeing an opportunity of passing, came between the Beeswing and the point, leaving about thirty feet space between the two boats; and, in doing so, he considered her out of her place.

Signed, HIRAM WILSON.

April 25th, 1844.

Francis Routh, witness for libellants, being duly sworn, deposeth and says, that he resides in the parish of Concordia, at the mouth of

Red river, and that he has resided there for the last five years. Witness has seen some planks at the spot where the Buckeye sunk, which he supposes to be the planks of the Buckeye, and attached to her hull. There is a bar extending out from the willows, about one hundred and fifty yards or more from the willows towards where the Buckeye lies. Witness says he thinks he has noticed an ebb and flow of the tide at the spot near where the Buckeye sunk. Witness does not mean at the place where the Buckeye sunk, but at his place on the Mississippi, which is known as Routh's Landing. Feeling some solicitude to ascertain the fact, witness placed a stake in the river, and observed it for three weeks. He noticed a daily change of about an inch. Water at this period was high—higher than it has been this season. He never, at any other time, noticed these changes; he never made any other experiments or observations for this purpose; his impression was, that it was the effect of the tide. Witness does not think the weather had any effect upon it.

The Buckeye now lies where witness thinks is the proper course of a boat running up, and where witness himself would run her. When he first saw her, she was lying, as he supposed, about the centre of the river; but it turned out, from information witness received from Capt. Caldwell, that she was lying about from fifty to seventy-five yards from the centre of the river. Witness would not judge the place where the Buckeye now lies to be the proper position of a boat descending the river, meeting another boat; but there was not much excuse for either, as there was plenty of room on both sides; and in saying that he would run the Buckeye there, he does not mean to say that she could not run closer in to the shore.

The De Soto should have been further towards the island shore. At an estimate, he would suppose she should have been at least from two hundred to two hundred and fifty yards further towards the island shore from where the hull of the Buckeye now lies. There are no snags on the bar, but snags close on to the edge of the bar, which are nearly in the middle of the river in high water.

Cross-examined.

There is a sand bar across the lower mouth of Old river, which rises, in low water, about ten or twelve feet high, cutting Old river entirely off from the Mississippi, for three or four months in the year; during which time, that part of Old river is a stagnant pond of water. This was the case in 1842, for five months. The fall from Old river into the Mississippi, on the upper side of the island, at low water mark, is, as witness thinks, at least five feet. It may be more, or it may be less. This is his opinion, and not the result of any actual measurement by witness. In extreme low water, the current is very rapid, and boats find great difficulty in ascending. In what witness has said about the ebbing and flowing of the tide, he gives it only as his opinion, from the fact that the fall was regular at night, and the rise at day. It might, however, be caused by a very large eddy near witness' house.

The eddy is one of the largest on the Mississippi. Witness' mark was above the eddy. He never noticed any appearance of tide at low water.

Witness does not think the tide would affect the waters of Old river, near where the Buckeye lies, in low water, unless it should come from the Atchafalaya. But if witness is correct about the tide, previously expressed, it would affect it at high water.

Witness does not know Klady personally; has never seen him but once. Being asked what is his character, and the estimation in which he is held by those who know him as a pilot, and whether he is not considered as a reckless and careless man, answers, that, as to his capacity of a pilot, he has never heard that questioned, but that his character is that of a reckless man; and he has heard from several persons, since the collision, and from all who have spoken to him on the subject, except Capt. Caldwell. Witness never heard of Mr. Klady before this collision, or ever heard any one speak of him. If it were true that the Buckeye, when she met the De Soto, was running up on the bar shore, as witness is informed is stated in the libel in this suit, might she have avoided the collision by running nearer in towards the bar, and how much nearer could she have run with safety? Answers, that she might have avoided the collision by running closer in to the bar; she might have run one hundred yards closer in to the willows. In Old river, there being very little current, boats generally take the shortest course; and he has seen them as frequently run up the bend shore as the bar shore.

Examination in chief resumed.

To a boat running up the river, witness thinks the bar shore would be the nearest course. Witness has heard Captain Phillips, General Downs, and Mr. Wm. White, and Mr. Glascock, speak of Mr. Klady, and these are all he has heard speak of Mr. Klady since the collision. He has heard Mr. Hermanson speak of Mr. McGuire not being able to see well at night.

(Counsel for respondents objected to this as hearsay. By consent, the same objection is made by counsel for libellant to the testimony concerning Klady's character.)

Cross-examination resumed.

He has heard General Downs, in a short conversation witness had with him, say that Klady was a reckless character; and that he was overseer for him, and had shot one of his negroes.

(Counsel for libellants objected to the above evidence concerning Klady, as being hearsay evidence and illegal, and as being a cross-examination resumed; counsel having no right to do so.)

Signed, FRANCIS ROUTH.

George W. Haygood, witness for libellants, being duly sworn, deposeth and says, that he has been steamboating above ten years, and at

present commands the steamer St. Landry; does not know where the Buckeye now lies, but he has seen a stake where he was told the hull of the Buckeye lies. He noticed three or four snags in the vicinity of the place designated. The place where the hull was designated as being at was inside one of the snags, and appeared to be outside of the others; he did not go near to them himself. He does not consider himself well acquainted with the navigation of Old river; he has been boating there, off and on, for three or four years; that he trades to Opelousas; that he generally goes by Plaquemine, and returns by the Atchafalaya and Old river. He knows pretty well the course a boat ought to pursue descending the river at that place. He generally, descending, runs his boat as near the proper place as he can; that, for the last three trips coming down, he has taken notice how far he ran from the place designated as the hull of the Buckeye, which was about four hundred yards, as near as witness could judge, towards the island shore from where the Buckeye is said to lie. Witness thinks this to be the proper course of a vessel descending. The rule for boats is, for the descending boats to keep the bend, and the ascending boats keep the bar. Witness has known Mr. Klady for four years; he has known him as a pilot, and that is the only way he ever did know him; he was pilot on the Norma when she was owned by Captain Caldwell and witness, and was pilot one trip when witness commanded her; he thinks this was about four years ago. Klady handled the boat very well the trip witness commanded her, and this was the only notice he ever took of his skill as a pilot. Witness knows Captain McGuire; has never heard him spoken of, either as good or bad; has heard of him as being a steamboat man for many years. Being asked if he had heard anything of McGuire not being able to see at night, answers that he never did, except from Captain Caldwell. He knows the steamboat De Soto; she has a double engine. Boats with double engines do not make as much noise as single engine boats. A boat heavily loaded with cotton, her furnace lights are not so visible as a boat not laden, and are only visible when directly in front. Witness thinks that his boat is about the same size and arrangement as the De Soto; thinks that he could stop his boat, still descending, by six or eight back revolutions, or eight revolutions, but he has never tried the experiment. If a boat is heavily laden, it would take more strokes to stop her than if she was not. Witness does not suppose that a boat in Old river, heavily laden, and in full headway, could be stopped still by less than six or eight revolutions; if she was light, she could be stopped with less.

Cross-examined.

No questions asked.

Signed, G. W. HAYGOOD.

Clerk's office U. S. district court, eastern district of Louisiana, May 4th, 1844.

GEORGE H. CALDWELL and als., of the steamer Buckeye,
vs.
THE STEAMER DE SOTO, master, and owners.

Evidence taken by consent of parties, before the clerk of the court acting as commissioner.

William F. Scott, witness for libellants, being duly sworn to answer the interrogatories propounded to him in the above entitled case, deposes as follows:

Int. 1. Were you or were you not a bar-keeper on board the steamer Buckeye during the winter of 1843 and 1844; if yea, was Robert E. Klady pilot of the vessel during that time; who ran the Buckeye?

Answers. That he was a bar-keeper on the Buckeye during the winters of 1843 and 1844; that Robert E. Klady was pilot of the vessel during that time; and, to the best of witness' knowledge and belief, Robert E. Klady was pilot and ran the Buckeye.

Int. 2d. Did you ever know him to get drunk, or to be the least intoxicated from the use of ardent spirits; was he or was he not a man of very temperate habits?

Answers. That he never knew him to get drunk, or to be the least intoxicated from the use of ardent spirits; that from his knowledge of him, he would say that he was a man of very temperate habits—sometimes, but very rarely, he would take a drink with his friends at the bar; but he, the witness, by Klady's particular request, always made it very weak for him, and witness remarked that he generally refused whenever he was asked to drink.

Signed, W. F. SCOTT.

Sworn to and subscribed before me, this 4th day of May, 1844.

Signed, N. R. JENNINGS,
Clerk and acting commissioner.

No cross interrogatories.

Signed, R. N. & A. N. OGDEN,
For Respondents.

S. L. Coy, witness for the libellants, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Int. 1st. Were you on the Buckeye at the time of the collission between her and the steamer De Soto, about the 1st of March last; in what capacity were you on the boat?

Answers. That he was on the Buckeye at the time of her collission with the De Soto, and in the capacity of a bar-keeper.

Int. 2d. If you were on the Buckeye, please to state all you know about the collission.

Answer. Witness states, that a minute or two before the collission, he

was in the main cabin of the Buckeye, where ten or twelve of the passengers were playing cards, and he went from the cabin to the social hall, and when he got to the hall door, he looked out and discovered a boat on the starboard side, which he plainly perceived, from the lights shading on the Buckeye, was about coming into her; as soon as witness discovered a collission was inevitable, he went into the bar-room for the purpose of getting out his trunk; and when in the act of going in the door, the boat which he had perceived approaching, struck the Buckeye and careened her so far, that the bottles in the bar-room fell down. Witness then took his trunk and returned to the cabin, to advise the passengers to be getting up on deck, that he was fearful the boat was sinking. He had not been there scarcely half a minute, when he discovered the water to be at his feet in the cabin. Witness left his trunk and got out upon deck, on the larboard side, when he proceeded on the hurricane deck until he reached the chimneys; when, between the pilot house and the chimneys, he met Mr. Klady, of whom he inquired how the collission happened; who replied, that she, meaning the other boat, had run over and run us down, and that he done what he thought was best. Witness then looked to discover which was the nearest shore, in the event of its being found necessary to swim. He secured a piece of wood, and put it on the chicken-coop to assist him in the emergency, should he be compelled to swim. After securing this stick, he commenced kicking in the sky-lights, where he found one of the engineers engaged in the same act. When witness was thus employed with the sky-lights, he discovered that the other boat was backing off from the Buckeye, when he immediately ran forward and hollowed to the other boat, as loudly as he could, not to think of backing off, but to come alongside and make fast to the Buckeye, and endeavor to save the women and children. After the boat came up, a ladder was put off from her to the hurricane roof of the Buckeye, forward of the chimneys. Witness then got on her bow, and, for the first time, he discovered that she was the De Soto, having been under the impression, previously, that she was the Star. Witness then took a line from the De Soto, returned to the Buckeye, and, assisted by Mr. Smith, the clerk of that boat, he made it fast around the Buckeye's bell post. Witness then assisted in getting the passengers out through the sky-lights. During all this time, the hurricane deck of the Buckeye was floating, her hull having sunk. Witness states, that when he was in the cabin with the passengers, who were playing cards as before mentioned, he heard the bell of the Buckeye ring, and immediately after the engine stopt and was shipped and commenced backing, which induced witness to go forward to the social hall as above described, when, on looking out, he saw the boat, which he afterwards discovered to be the De Soto, coming as if she would strike the Buckeye about the forward hatchway. When he next saw her, which was when he got upon deck, the bows of the De Soto were forward of the Buckeye, even with the bell post. The hull of the Buckeye had then parted from her cabin.

Int. 3d. What was the direction of the bows of the boat immediately after the collission?

Answers. That the bows of the Buckeye were pointing quartering towards shore, and the bows of the De Soto were at about right angles to the Buckeye.

Int. 4th. Had you an opportunity of knowing who played cards on the night during which the collission occured; if yea, did Robert E. Klady play cards that night; did any officer of the boat play cards while you were on the boat?

Answer. Witness states that he knew all the persons who played cards that night, altho' he did not know them by name; that Robert E. Klady did not play cards that night; and no officer of the boat played cards whilst he, witness, was on the Buckeye.

Int. 5th. Did you have an opportunity of knowing who drank liquor; if Klady had been drunk, would you not have known it; was he or was he not at all intoxicated that night?

Answer. He knew all those on board, altho' not by name, who drank any thing; that Klady never drank any thing at the bar but water, all the time he, witness, was on the Buckeye, and that he is sure that he was not all intoxicated the night of the collission.

Int. 6th. Where did you go after the Buckeye sunk; was there a card gotten up on board the De Soto shortly after the collission, intended to shield the officers of the De Soto from all blame; what became of that card; did not the persons who signed it, afterwards erase their names?

Answers. That he came to New Orleans on the De Soto; witness did not see the card mentioned in the interrogatory, but he only heard from those who signed a card, purporting to shield the officers of the De Soto from all blame, that they had afterwards erased their names, when they read the card over more attentively.

Int. 7th. Do you know any other matter or thing which will assist the libellants in this suit? If yea, please state it as fully as if you were specially interrogated thereto.

Answer. In answer to this interrogatory, witness states, that he knows of nothing further that would be material to the libellants in this suit, except that, when he was on the De Soto, after having left the Buckeye, when she sunk, he heard one of the engineers of the De Soto, whose name witness does not know, say, that when the collision between the boats occurred, he was pulling on his boot, and thought that the De Soto had run upon a bar.

Cross-examined.

We are under the impression that this witness has already been examined in this case, and if such be the fact, we then decline joining in this examination, or consenting to his being re-examined. If it is not the case, then we consent to his being examined, but object to the 6th question as leading.

Signed, R. N. & A. N. OGDEN,
Att'ys for the respondents.

Cross-interrogatories.

Int. 1. Do the owners of the Buckeye owe you any thing?

Answers. That they do not.

Int. 2. In whose employ are you now?

Answers. That he is not in any employment at this time.

Int. 3. Have you not heard one or both of the owners of the Buckeye say that the collisions would not have taken place, if the other pilot had been at the wheel, or if Klady had done his duty, or words to that effect?

Answers. That he does not know who the owners of the Buckeye are, but he is confident that he never heard such a remark from the lips of any one.

Int. 4. Were you up at the time of the collision? and have you stated any thing, in your replies to the direct interrogatories, which was known to you by the information of others, and not by what you saw yourself? if so, state it.

Answers. That he was up at the time of the collision; and that what he has stated, in reply to the direct interrogatories, has been from his own knowledge, and not from any information derived from others.

"This evidence being read over to the witness before signing it, he states, that he wishes to amend his answer to the 4th direct interrogatory, by stating, that he himself played cards sometimes, although he does not know whether, as bar-keeper, he could be considered as an officer of the Buckeye."

Signed, SAMUEL L. COY.

Sworn to and subscribed before me, this 6th day of May, A. D. 1844.

Signed, N. R. JENNINGS,
Clerk and act'g com'r.

CLERK'S OFFICE, U. S. DISTRICT COURT,
June 4th, 1844.

Witness for the libellant.

Spencer Griffin, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Int. 1. Are you acquainted with the navigation of Old river; and do you, or not, know where the hull of the Buckeye lies? If yea, please state whether or not she is in the position boats usually occupy ascending that river. Was she in a proper position for a boat descending the river? If not, how far ought she to have been, from where the hull of the Buckeye now lies, towards the island shore?

Answer. That he is well acquainted with the navigation of Old river, and that he knows where the hull of the Buckeye lies, from the fact of the diving bell operating at the place where the Buckeye was said to have been sunk; states, that being in that place, she was very near in the position that boats usually occupy when ascending that river. In reply to the other questions of this interrogatory, witness states

that he does not very distinctly understand them, but makes the following answer: that if he, witness, had been in command of the Buckeye, at the place where she is represented to have been sunk, he would consider that he had left ample room for a boat descending, and that the descending boat ought to have kept at least one hundred yards, from where the hull of the Buckeye lies, towards the island shore.

Int. 2. If the hull of the Buckeye lies where you saw the diving bell, and lies parallel with the left hand shore or bar side, ascending, with her bow up stream, and is stove in on her starboard side, was she in fault, or the boat that sunk her?

Answer. That the Buckeye, being in the position described in the interrogatory, and stove in on her starboard side, that she, the Buckeye, was in her proper position, making for the shore to which she belonged; and witness being interrogated as to the fact, which boat, under the circumstances, was or would have been in fault, declines making any further answer.

Int. 3. For what purpose is the alarm bell on a steamboat rung?

Answers. That the alarm bell is rung for the purpose of announcing to the opposite boat that she is about to take her proper position; or, if the boat upon which the bell is rung should perchance be out of her place, it is to announce that she is about to take it, giving thereby both boats an opportunity to take their proper places.

Int. 4th. Are you acquainted with David McGuire, and how long; and in what capacity have you known him; what are his qualifications as a steamboat pilot; do you consider him a skilful and competent pilot?

Answers. That he is acquainted with David McGuire; and that he has known him, since 1829, in the capacity of mate, captain, and pilot of steamboats; witness states that he was engaged in navigating the same trade with McGuire, and that, whatever other persons might have considered of his qualifications as a pilot, he, witness, did not consider him as skilful or competent as the other pilots who were engaged in the trade; witness declines answering the direct question as to his skilfulness or competency.

Int. 5. Do you, or do you not, know that, for the last six or seven years, MacGuire has not been able to see as well as a skilful pilot should see, and more particularly at night? State any thing you know going to show that McGuire's eyesight is bad, particularly at night.

Answer. In answer to this interrogatory, witness states, that he has served upon the same boat with McGuire, and that it was his impression, from various facts, that McGuire's eyesight was defective, and that the observation was made to witness by several officers who were then on the same boat; that this occurred about ten years ago; witness, before that time and since, did not think his vision as good as that of other pilots, and that he considered it to be particularly defective at night; witness cannot state any particular facts at present, with regard to McGuire's eyesight; the impression was general that his eyesight was as he has already described it.

Int. 6. Do you, or not, know McGuire's character for veracity, and would you believe him under oath?

Answer. In answer to this interrogatory, witness states, that in a certain case, entitled S. Griffin, tutor, vs. Wm. Waters, in the probate court of the parish of Rapides, McGuire was introduced as a witness for deponent, on the trial of the cause, and that, from the discrepancies in his evidence in that case, witness must say that he would not believe him under oath; that witness is very reluctant in stating this, as to the veracity of any individual; but the evidence, as given by witness, is based upon the fact, and that fact only, of the discrepancy in the evidence of McGuire in the case as abovementioned, which testimony is now of record in the supreme court of this State.

Signed, SPENCER GRIFFIN.

No questions, but opinions of witness called for by 2d interrogatory objected to.

Signed, R. N. & A. N. OGDEN.

Sworn to and subscribed before me, this 4th day of June, 1844.

Signed, N. R. JENNINGS,
Clerk and acting com'r.

Garrett Jourdain, witness for the libellant, being duly sworn, before me, this 2d day of May, 1844, to answer the interrogatories propounded to him, deposes as follows:

Int. 1. Have you ever been engaged in the navigation of the Mississippi river? If yea, please state how long. What kind of vessels have you commanded?

Answers. That he has been engaged in the navigation of the Mississippi river, and for more than thirty years; that he has piloted and commanded steamboats, keelboats, and flatboats.

Int. 2. Have you ever observed the effects of the ebbing and flowing of the tide on said river? If yea, please state when, and where, and how much the tide ebbed and flowed. For how long a time did you observe this at the places you have named? Do you or not think it possible that the effects you observed could have been produced by changes in the weather? Was it in calm or windy weather you observed these changes in the river?

Answer. Witness has observed the ebb and flow of the tide on the Mississippi river. That he has observed it to ebb and flow below the mouth of Red river in the year 1816, and at different times afterwards, and particularly in the year 1818, below Baton Rouge, and in 1823 at Natchez, and in the fall of 1824, nine miles above Natchez; and that he has noticed it, at different points on the river, at various times, from the years mentioned, up to the present time, at low stages of water. About the neighborhood of Red river the tide ebbed and flowed about four inches; and at the points above, higher up in the neighborhood of Natchez, about two inches. About Natchez witness observed the ebb and flow for about two months, and below Baton Rouge about the

same space of time; and about Red river he observed it four or five times. Witness does not think it possible that the effects of the tide as observed by him could have been produced by changes in the weather; it was in calm weather, when there was barely any wind at all, that witness observed these changes.

Int. 3. Were the changes you observed in the river regular? What was about the time of high tide and low tide?

Answer. That the changes observed in the river were regular, and the time of high tide was about 9 o'clock, P. M., and time of low tide about daylight, and from that to sunrise.

Int. 4. At about what stage of water did you observe the ebb and flow of the tide at the Red river?

Answer. That it was pretty low water, at what might be called a low stage.

Int. 5. What do you consider an ordinary stage of water in the Mississippi? Do or do you not think that the tide would affect Old river when the Mississippi is at an ordinary stage?

Answer. That an ordinary stage would be about ten or twelve feet above low water mark. He thinks that the tide would affect Old river to some degree when the Mississippi is at an ordinary stage; but he cannot tell how much.

Int. 6. From your knowledge of steamboating do you or do you not think it possible for them to run sideways, or to make lee way?

Answer. That he does not think a steamboat could run sideways, or make lee way, unless a hard wind blew on her broadside.

Int. 7. How many revolutions back do you think it would require to stop a boat still in the water, if she were running down stream, loaded with cotton, at the rate of 8 or 10 miles an hour in Old river?

Answer. That he thinks it would take from ten to twelve revolutions to check her still.

Int. 8. From the usual construction of boats, at what angle would an ascending boat be to a descending boat when run by the pilot of an ascending boat abaft the chimnies?

Answer. That it would be an angle of about forty degrees.

Int. 9. If the De Soto was still at the moment of collision, and the Buckeye struck her stern at a distance of six or eight feet from the stern or jack staff of the Buckeye, what would be the effect of such a collision upon the Buckeye? Would it not be possible for the De Soto to run into the hull of the Buckeye?

Answer. The effect of such a collision would be to tear the guard off the Buckeye. He does not think that if the De Soto were still she would run into the hull of the Buckeye.

Int. 10. If the De Soto had been running directly down stream, and the Buckeye had been running across her bows at an angle of 45 degrees, or across her bow at all, would it be possible for the heads of both boats to point up stream immediately after the collision?

Answers. He thinks that it would not be possible for the heads of both boats to have pointed up stream; that the effect would have been to have slewed the Buckeye round, her head down stream.

Int. 11. If a double engine boat backs on one wheel, what effect will that have upon the motion of the vessel. If she backs on one wheel, and goes forward on the other, what will be the effect upon the motion of the boat?

Answer. That if she backs on one wheel, the effect will be to turn her around; and if she backs on one wheel, and goes forward on the other, the effect will be to turn her pretty much on a pivot.

Int. 12. Do you or not know the steamer De Soto? Is she a double engine vessel? Do you know whether double engine vessels make as much noise when running as single engine vessels?

Answers. That he knows the steamer De Soto. That she is a double engine boat. That generally double engine boats do not make as much noise as single engine boats from the escapement of their steam.

Cross-interrogatories.

Int. 1. Are you acquainted with Old river; and if so, how often have you been there since the cut-off was made; and how long since you were last there?

Answers. That he is acquainted very little with Old river; that he has been there but once since the cut-off was made, and that was with Captain Kimball, and in the year 1839.

Int. 2. If you are acquainted with Old river, how high is the bar at the outer end of Red river island, which shuts off Old river from the Mississippi in low water?

Int. 3. Is not Old river, on the lower side of Red river island, a pond of stagnant water three or four months of the year?

Int. 4. How much higher is the levee of Old river, in dead low water, than the levee of the Mississippi at the same stage?

Answer. Witness says that he knows so little about Old river, that he cannot answer the second, third, and fourth interrogatories, except so much of the second cross-interrogatory, that, when the Mississippi is about 12 feet above low water mark, that the water connects with Old river.

Int. 5. Do you think it possible for a steamboat to run sideways, or make leeway in still water?

Answer. That he does not think it possible for a steamboat to run sideways, or make leeway in still water.

Signed, GARRETT JOURDAIN.

Sworn to and subscribed, before me, this 2d day of May, A. D. 1844.

Signed, N. R. JENNINGS,
Clerk and acting Commissioner.

April 30*th*, 1844.

David H. Jones, witness for the libellants, being duly sworn to answer the interrogatories that shall be propounded in the above entitled suit, deposes as follows:

Int. 1. Are you or are you not acquainted with the position where the Buckeye was sunk? State the same.

Answer. Witness states that he knows the place where the Buckeye

was sunk; that he knows or distinguishes it by a piece of her frame, called a string piece, sticking out of the water, at the place where the Buckeye was represented to witness as having been sunk. The position of the wreck witness is not able to state.

Int. 2. If an ascending boat had crossed the river from the island to where the hull of the Buckeye lies, would she, or would she not, have crossed all that part of the river which a descending boat would be entitled to on meeting another at that place?

Answer. That she would have crossed all that part of the river which a descending boat would be entitled to on meeting another at that place.

Int. 3. If the De Soto was still, or had stern way, and the Buckeye crossing athwart her bows at an angle of 45 degrees, had struck her stem with her starboard side, five or six feet from the stem of the Buckeye, what would have been the effect on the Buckeye?

Answer. That the effect would have been to break her beams and nosings, thereby damaging her (the Buckeye) considerably.

Int. 4. If the De Soto had pursued her proper course in the middle of the channel, in meeting a boat, how far ought she to have passed from where the Buckeye now lies?

Answer. Some two hundred yards.

Int. 5. How many back revolutions would it have required to stop the De Soto on Old river, she running at the rate of 8 or 9 miles an hour, and loaded with cotton?

Answer. That to the best of his knowledge and idea it would have required from eight to twelve back revolutions, provided she backed immediately.

Signed, DAVID H. JONES.

Sworn to and subscribed, before me, this 30th day of April, 1844.

Signed, N. R. JENNINGS,
Clerk and acting Commissioner.

Cross interrogatories waived.

Signed, R. N. & A. N. OGDEN,
For Respondent.

Samuel Bandy, witness for the libellants, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Int. 1. Did you, or did you not, hear Mr. Glascock say he had held his watch during the time the Buckeye was sinking? If yea, what did he say?

Answers, that he did hear Mr. Glasscock say that he held his watch whilstthe Buckeye was sinking; that Mr. Glasscock was holding a conversation with several persons at the time; and that he did say that the Buckeye was precisely eleven minutes and a half in sinking by his watch.

Cross-interrogatories.

Int. 1. If you did hear him so say, then please to state when, where, in what manner, under what circumstances, what led to it, and who were present.

Answers that he cannot state exactly the time when Mr. Glasscock

said so; that the conversation took place at the wharf at New Orleans; that he does not know, nor can state, exactly, what led to the conversation; that Mr. Glasscock appeared to be in earnest when he made use of the expression; that a good many persons were present, among whom were James Smith and Hodkins. Witness being asked again as to the time, states that he cannot tell exactly, there being nothing to make him remember the time particularly, but that it was shortly after the sinking of the Buckeye.

Int. 2. Where do you live, and what is your occupation?

Answers. That he resides at Harrisonburg, on the Ouachita river; that, for the last two years, he has been engaged in steamboating during the winter seasons; when asked in what capacity, states that, for the first season, he was learning the river, and for the last he was employed as a pilot.

Signed, SAMUEL BANDY.

Sworn to, and subscribed before me, this 30th day of April, 1844.

Signed, N. R. JENNINGS,
Clerk and acting commissioner.

H. Filhiol, being duly sworn, a witness for libellants, to answer the interrogatories propounded to him, deposes as follows:

Int. 1. What was the quantity of freight which Mr. Glasscock had on board the Buckeye at the time of the collision of that vessel with the De Soto?

Answers. That he had on board a barrel of flour and a keg of rice, the value of which was about six or eight dollars, and the freight on it about six bits.

Signed, H. FILHIOL.

Sworn to, and subscribed before me, this 30th April, 1844.

N. R. JENNINGS,
Clerk and acting commissioner.

Cross-interrogatories waived.

Signed, R. N. & A. N. OGDEN,
For respondent.

May 1st, 1844.

Joseph M. Sollibellas, witness for libellants, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Int. 1. Were you, or were you not, a passenger on board the steamer Buckeye at the time she was sunk by a collision with the steamer De Soto, in Old river, about the 1st March, 1844? If yea, please state whether you saw the boats at the moment of collision, and how you were situated.

Answer. States that he was a passenger on the Buckeye at the time she was sunk by a collision with the De Soto. States that he did not see the boats at the moment of collision; that he was asleep at the time of the collision; that he was awoke by a noise, and heard some one say, that the Buckeye was sinking, which caused witness to jump from his

berth; when he ran to the social hall door, where the water met him, about waist deep. Witness was then forced back by the water, and got back as far as midships, when he jumped on a table, and got out on the sky lights of the Buckeye, on the larboard side, upon her hurricane deck. When there, he saw the De Soto, and her bows were nearly touching the front part of the hurricane deck of the Buckeye. The boats appeared to be about four or five feet apart, and their sterns appeared to be about forty or fifty feet apart, more less. The moment witness got upon the hurricane deck, he asked what caused the accident? and some one, pointing to the De Soto, said, that boat had sunk us. Witness could plainly perceive the De Soto, it being a clear moon shining night. Witness then got from the hurricane deck of the Buckeye to the yawl of the De Soto, and got on board the De Soto on to her stern. Witness further states, that some person told him, when he was upon the hurricane deck of the Buckeye, as above stated, that the hull of the Buckeye had separated from her cabin, which was then afloat. Witness felt a jolt as he was getting through the sky lights, and upon inquiring the cause the moment after, learnt that it was occasioned by the separation of the cabin and hull as above stated.

Int. 2. Were you, or were you not, playing cards at the time of the collision, or a short time before? Had you, or had you not, been playing cards that night? If yea, state what time of night it was that you played cards.

Answer. States that he was not, nor had been, playing cards during any part of the night upon which the collision occurred.

Cross-interrogatories.

Int. 1. Were you not engaged in playing cards a moment before the collision? and did not some gentleman, a passenger, come in from the guards, or boiler deck, and warn those at the table that a collision was about to occur?

Answer. To this interrogatory witness answers, no. That he was not playing cards, and no passenger, to his knowledge, came in to give a warning that a collision was about to occur.

Int. 2. Was not that passenger a Mr. Isaac Johnson, an engineer?

Answer. The answer to this interrogatory is contained in the answer given to the 1st interrogatory.

Int. 3. Was not the Buckeye, at the time of the collision, crossing the river from the island shore? If you did not see this yourself, did you not hear it so stated by Capt. Caldwell or Mr. Smith, or by some one in their presence?

Answers. That he did not see the Buckeye at the time of the collision crossing the river from the island shore. Witness neither saw it himself, nor did he hear it so stated by Captain Caldwell, nor Mr. Smith, nor by any one in their presence.

Int. 4. Have you not, since the collision, heard from Mr. Smith, the first clerk, and part owner of the Buckeye, that it was owing to the fault of

Klady, the pilot, then at the wheel; and that if the other pilot had been at the wheel, it would not have happened, or words to that effect; and what did he say?

Answer. To this interrogatory witness answers, that he never heard Mr. Smith say any thing upon the subject.

Int. 5. What is Klady's character as a pilot?

Answers. That he knows nothing of his character as a pilot; and that he does not know him at all.

Int. 6. Was not the Buckeye too much loaded, and was she not leaking a great deal before the collision?

Answers. That she was heavily loaded, but he cannot say whether she was too much loaded or not; that he knows nothing of her leaking.

Int. 7. State any other fact you may know, shewing that the blame ought to rest on the officers of the Buckeye, and not on those of the De Soto; and any thing you may know material to the owners of the De Soto.

Answers. That he knows of no fact going to shew that the blame ought to rest on the officers of the Buckeye, and not on those of the De Soto; that he was not in a situation to learn or to know upon whom the blame ought to rest, whether the officers of the Buckeye or the De Soto; and that he knows of nothing that would be material to the owners of the De Soto.

Int. 8. Did you see Benjamin F. Glasscock that night? Do you know him? Is he, or is he not, a man whose veracity as a witness, and whose character as an honest and honorable man, is unquestionable?

Answers. That he saw a gentleman by the name of Glasscock that night; he does not know whether his name was Benjamin F. or not; that he was introduced to him upon the Buckeye on her trip from New Orleans, when the collision occurred; and that, from the fact of said introduction, and from his own observations, he should say that he was an honorable man, and worthy of belief.

Int. 9. Do you know Isaac Johnson, the person mentioned in the 2d cross-interrogatory, and what is his character for truth, honesty, and intelligence?

Answers. That he knows Isaac Johnson, and that he has known him since the year 1834; that he has frequently travelled with him on steamboats, when he, Johnson, had acted as engineer; that he has never heard any thing derogatory to his character; and that he, witness, regards him, in his opinion, as being an honest and correct man.

Int. 10. Do you think it possible that any tide from the Gulf of Mexico can affect Old river at any stage of water?

Answer. Witness does not think it possible that any tides from the Gulf of Mexico can affect Old river at any stage of water.

Re-examination in chief resumed.

Int. 1. If, in your answers to the 3d and 4th cross-interrogatories,

you state, that you heard Capt. Caldwell or Mr. Smith say any thing upon the subject of the collision, please state where and when it was, and who was present, and the language used.

Answer. To the 1st interrogatory, witness has already stated, that he never heard Capt. Caldwell nor Mr. Smith say any thing upon the subject of the collision.

Int. 2. If you state, in your answer to the 5th interrogatory, any thing to the prejudice of Klady's character, as a pilot, state how you derived your information, and whether you ever heard anything against him before the collision. Are you a pilot yourself?

Answer. To a part of the second interrogatory, witness has already answered, that he knows nothing of prejudice to the character of Klady as a pilot; and further answers that he is not a pilot.

Int. 3. If you say anything about Glasscock's character for veracity, you will please state whether he is not generally called a great liar.

Answer. To the third interrogatory witness answers, that he knew Mr. Glasscock very slightly, and that he never heard him generally called a great liar.

Int. 4. If you state there are no tides in Old river, you will please state how you know this; have you ever made particular observations to ascertain the fact?

Answer. To the 4th interrogatory witness answers, that he knows it from no facts, but gives it simply as his opinion; and that he never made any observations to ascertain the fact whether there was any tide in Old river or not.

Signed, J. M. SOLIBELLAS.

Sworn to and subscribed before me, this 1st day of May, A. D. 1844.

Signed, N. R. JENNINGS,
Clerk and Acting Comm'r.

May 4th, 1844.

Austin P. Hening, witness for libellant, being duly sworn to answer the interrogatories propounded to him in the above entitled case, deposes as follows:

Int. 1. What is your profession; were you on the steamer Buckeye at the time she was sunk by the steamer De Soto, in Old river, about the 1st March last; if so, in what capacity were you?

Answers. That he is a pilot on the Mississippi and Ouachita rivers; that he was on the steamer Buckeye at the time she was sunk by the De Soto, in Old river, about the first March last; and that he was a pilot on the Buckeye at the time.

Int. 2. If you were on the Buckeye at the time above referred to, you will please state all you know about the collision; what was the position of the boats when you first saw them; how far did the De Soto run into the Buckeye; was either vessel backing at the time you first observed them; what movements did the boats make immediately after the collision; when did the De Soto first commence backing after the colli-

sion; do you or do you not think it possible that the bow of the Buckeye was pulled up stream by the backing of the De Soto?

Answers. That on the night of the collision he retired to his berth, and after having been there, as he supposes, about half an hour, he was awoke from his sleep by the crushing of the boats; he immediately jumped up, and saw the condition of the two boats; the position of the boats was that the Buckeye was heading to the left of the point a little, and the De Soto was run into the Buckeye so far, that he could step from the hurricane roof of the Buckeye on to the cotton upon the De Soto, without any trouble, which was very near square into her; the De Soto run into the Buckeye nearly as far as the Buckeye's hatch; neither vessel was backing at the time when witness first observed them; the De Soto swung around immediately after the collision, alongside the Buckeye; after the Buckeye was sinking, the De Soto commenced backing on her starboard engine, to endeavor, as witness thought, to keep the two boats together; then she got clear from the Buckeye, and was from her about from five to ten minutes, and then she went ahead, on the same engine, and came to the wreck of the Buckeye again; the bow of the Buckeye was not pulled up stream by the backing of the De Soto?

Int. 3. Are you acquainted with the navigation of Old river, at the place the collision occurred; what is the usual course that ascending vessels pursue, just before entering the mouth of Old river, and after entering it; do you consider that the Buckeye was in the proper position for an ascending boat; was she as near the bar as it would have been safe for her to run in the night; is it usual for vessels to run over the bar at that place?

Answers. That he is acquainted with the navigation of Old river at the place the collision occurred; the course for an ascending boat to pursue, just before entering the mouth of Old river, is, to go nearest the left-hand shore, and after entering it to keep the middle of the river, from half a mile to three quarters, if any thing nearest the island shore, and then to bear gradually around the bar; witness considers that the Buckeye was in the proper position for an ascending boat, and that she was as near the bar as it would have been safe for her to run in the night; in very high water, and in daylight, boats sometimes run over the bar at that place, but very seldom; and never at the stage of water when the Buckeye sunk, would it be attempted.

Int. 4. Have you or have you not observed snags at that bar; are there many snags there?

Answer. He has observed a good many snags on that bar, he does not know how many; but the morning of the collision he observed four or five.

Int. 5. Was the Buckeye, at the time of the collision, making her crossing, or had she already made her crossing?

Answer. That at the time the collision occurred, or a little before, the Buckeye had no crossing to make; the first crossing that she would have had to make on the river is about a mile or a mile and a half above where

she sunk; and the Buckeye, at the time of the collision, was in her proper direction before making that crossing.

Int. 6. Was or was not the De Soto in the proper place for a vessel descending at the time of the collision; if not, how far was she from it, and in what direction?

Answers. That the De Soto was not in her proper place for a vessel descending at the time of the collision; she was from 250 to 300 yards out of her proper place; as to the direction he cannot answer; for, when witness first saw the De Soto, she had run into the Buckeye, as above stated.

Int. 7. Do you know Rob. E. Klady, the pilot of the Buckeye; how long have you known him; have you ever served with him as pilot; do you consider him a good pilot; what was his general reputation as a pilot; did you ever know him to get drunk, or to be the least intoxicated?

Answer. That he knows Robert E. Klady, the pilot of the Buckeye, and has known him between five and six years; that he has served with him as a pilot; that he considers himself as good a pilot as any in the trade, and that he considers Mr. Klady equal to himself; that his general reputation as a pilot was good; that he never knew him to get drunk, or to be in the least intoxicated.

Int. 8. How long had you been on the Buckeye; had she been in the habit of carrying full freight; was she sufficiently strong to carry full freight; have you not seen her much more heavily laden than she was at the time of the collission; have you not seen her with full loads of cotton; is not that cargo more straining on a boat than other kinds of cargoes?

Answers. That he had been on the Buckeye some four or five months; that she was in the habit of carrying full freights, and that she was sufficiently strong to do so; witness has seen her much more heavily laden than she was at the time of the collission; that he has seen her with full loads of cotton, and a cargo of cotton is the most straining of any that can be on a boat.

Int. 9. Did you ever examine the hull of the Buckeye; was she sound or not; did she leak more than was usual with vessels?

Answers. That he has examined the hull of the Buckeye, and found it to be sound, and she did not leak more than was usual with vessels.

Int. 10. Do you know any thing else that will assist the libellants in recovering the value of the Buckeye? If yea, please state it.

Answer. Witness knows of nothing else.

Cross-interrogatories.

Int. 1. Since the collission, have you not heard Mr. Smith, one of the owners of the Buckeye, or Capt. Caldwell, or both of them say, that if you had been at the wheel, the accident would not have happened?

Answers. That Capt. Caldwell never said to him, that if he, witness, had been at the wheel, the accident could not have happened, nor ever intimated such a thing. Mr. Smith did, upon one occasion, say

something to him upon the subject, but what it was, witness does not recollect; the conversation took place at the mayor's office, when Mr. Smith observed to him, that he wished he had been at the wheel; but when the position of the boats was pointed out to him, he acknowledged that the collission was inevitable, no matter who had been at the wheel of the Buckeye.

Int. 2. Do you not know that Klady is a careless and a headstrong, reckless man; and is not such his reputation?

Answer. That he does not regard Klady to be at all careless, headstrong, nor reckless; and that such, heretofore, has not been his reputation.

Int. 3. At what time, during the night of the collission, did Klady take the wheel; and did you not then go to bed; and were you not in bed when the collission took place?

Answers. That Klady took the wheel, the night of the collission, at about 3 o'clock; that he, witness, then went to bed, and that he was in bed at the moment of the collission.

Int. 4. Had not Klady been sitting up playing cards on that night, during your watch, instead of taking his regular sleep; and was he not very sleepy when he came to the wheel to relieve you?

Answers. That Klady had not been sitting up playing cards during his, witness's, watch; that he, witness himself, woke him up from his berth, which was in the pilot house; that he, Klady, went to bed immediately after supper, and slept until 12 o'clock, when witness woke him up; he, Klady, complained of being a little unwell, that he felt somewhat cold, and said that he would go down to the engine room; at about 3 o'clock, Klady returned and took the wheel; he did not appear either to be sleepy, nor complained any further of feeling unwell.

Int. 5. Have you any thing to expect from the success of Capt. Caldwell in this suit; any part of your wages still due you?

Answers. That he has nothing to expect from the success of Captain Caldwell in this suit; that some part of his wages may yet be due him, he does not know how much, but that he is perfectly indifferent about it; having now a good situation as a pilot, he has not thought at all of the matter, and feels no more regard for Capt. Caldwell than he does for Capt. Kimball.

Witness wishes it to be particularly stated, in further answer to this interrogatory, that, in giving his evidence, he has not been influenced by any regard for the success of Captain Caldwell in this suit; that a pilot who has a good character, and can get employment, does not think of a few dollars that may be owing him.

Int. 6. Ought not the Buckeye to have remained on the island shore, and not attempt to cross after seeing the De Soto, unless the De Soto had passed; and would you not have taken that course if you had been at the wheel; would you have attempted to cross without first seeing where the De Soto was, and assuring yourself that you had full time to cross before meeting her?

Answer. That he does not know that the Buckeye was on the island

shore at all; had witness been on the island shore, and saw the descending boat so close that he would have time to cross, he certainly would have continued on the island shore; that he knows nothing of the previous directions and position of the Buckeye and the De Soto, until he saw them together, as already stated; witness says, that when ascending he, as a pilot, never, upon any consideration, runs upon the island shore.

Signed, AUSTIN P. HENING.

Sworn to and subscribed before me, this 4th day of May, 1844.

Signed, N. R. JENNINGS,
Clerk and acting commissioner.

Eli Brazelton, witness for libellants, being duly sworn to answer the interrogatories propounded to him, deposes and says:

Int. 1. Do you know where the hull of the Buckeye now lies? If yea, state how you know it.

Answers. That he knows where the hull of the Buckeye now lies; the spot where she was sunk was pointed out to witness, a piece of the cading of the cabin-deck was sticking out of the water at the spot; witness went in a yawl to this spot, threw a lead line out and discovered the hull of the boat; witness then descended in a diving bell to the hull, and brought up the capstan bits and several beams belonging to the boat sunk.

Int. 2. Do you not know what part of her was struck by the De Soto? If yea, state all you know about the effects of said collission, and how you know the same.

Answers. That the Buckeye was struck on her starboard bow; the effects of the collission were, that the Buckeye's starboard bow was broken in, commencing within about 4 feet of the stem of the boat, and running back nearly as far as the forward part of the hatch, going in so far as to knock the capstan clear out of its place, leaving it flat on the deck, being knocked over on the larboard side, where the deck was not broken up; the bits of the Buckeye were also knocked loose; these effects witness judged of and knew by going down in the diving bell, and examining the same with his hands.

Int. 3. How far did the De Soto run into the Buckeye; was the capstain knocked out of its place by the collission; do you know any other facts going to show how far the De Soto ran into the Buckeye? Please state them.

Answers. That, from the appearances, the De Soto's stem must have gone as far as the centre of the deck of the Buckeye, and the capstain, as already stated, was knocked out of its place by the collission; witness knows of no other facts than those already stated.

Int. 4. Was or was not the stem, or the extreme point of the bow, of the Buckeye, injured or touched by the collission?

Answers. That the stem or the extreme point of the bow of the Buckeye was not injured by the collission, but that the chock passing around the bow was broken loose, and found lying on the beams that were not broken away.

Int. 5. In what direction did the hull of the Buckeye point after the collission; how did you know the direction of the Buckeye after the collission?

Answers. That the hull of the Buckeye has the appearance of lying parallel with the larboard shore, her bow pointing up the river; witness knows this by sounding on the hull with the lead, and also by descending in the diving bell and examining it attentively, and finding it correspond with the direction in which the bell boat lay.

Int. 6. How much of the hull of the Buckeye was knocked in by the collission?

Answers. That this interrogative has been already answered, to the best of his knowledge, in the statements above made.

Cross-interrogatories.

Int. 1. Did you see the collission between the Buckeye and De Soto; did you see the hull of the Buckeye after the collission; if so, when, where, and how did you see it; and how did you derive your knowledge; was it by seeing?

Answers. That he did not see the collission between the Buckeye and De Soto; that he did not see the hull of the Buckeye after the collission; that witness derived his knowledge by descending in the diving bell and feeling the parts of the boat as above described, and by making fast a chain to the beams of the wreck, and raising them out of the water and examining their condition; the capstan and bits were the only parts of the boat which witness saw, except some pieces of her cabin, and some loose part of her deck plank, which came up by breaking up the beams, the chock around the bow was also raised up and examined by witness.

Int. 2. Where do you live; what is your occupation; if you made any examination as to the state and situation of the Buckeye, when, how, at whose procurement, and who paid you for it; and how much were you paid, or are you to be paid; and if not yet paid, when are you to be paid, and by whom?

Answers. That he resides in the city of St. Louis, and that his occupation, for 18 months, has been wrecking sunken steamboats with a diving bell, and that is his present occupation; that he made the examination of the Buckeye, already described, in the last two weeks, being employed by Capt. Caldwell, on account of whom it may concern, to procure or take from the Buckeye all articles of value possible to be obtained, and that he is to be paid three-fourths of the proceeds of the sale of the articles obtained from the wreck.

Int. 3. Have you any interest, direct or indirect, in the event of this suit, or are related, and how, to any party interested?

Answers. That he has no direct or indirect interest in the event of this suit, and that he is not related to any party interested.

Signed, ELI BRAZELTON.

The witness, in making his answers to the interrogatories in chief, as above given, had before him a drawing, which purports to be the hull

of the wreck of the Buckeye, as examined by him under water, or that part of it forward of the boilers; showing, to the best of his knowledge, the effects of the collission upon the Buckeye, and he desires that the same be annexed to the above depositions.

[For drawing, see original.]

The above depositions were sworn to and subscribed before me, this 15th day of May, 1844.

Signed, N. R. JENNINGS, *Clerk &c. A. C.*

May 7th, 1844.

John T. Sterling, witness for libellant, being duly sworn to answer the interrogatories propounded, deposes as follows:

Int. 1. Do you know the parties to this suit?

Answers. He knows Capt. Caldwell very well, but is not much acquainted with the other.

Int. 2. Are you, or not, well acquainted with Robert E. Klady, recently pilot on the Buckeye? If yea, state what you understand to be his reputation and character, as a man and a pilot. Is he or not a steady, sober, and trustworthy man, and so esteemed by those who know him; how long have you known Klady?

Answers. That he is well acquainted with Robert E. Klady; his reputation as a man is generally fair, and as a pilot, I believe him to be competent. He is a sober man, as far as witness knows; never saw him drink any spirits, as he recollects of; he believes him trustworthy, but cannot say what other people think of him; says that it is fifteen years or more since he became acquainted with Klady.

Cross-interrogatory.

Int. 1. What are the sources from which you derive your knowledge of Robert E. Klady? State particularly whether you have ever understood him to be a rash, or a reckless, headstrong man, and a careless pilot.

Answers. That Klady was raised in the neighborhood where witness resides, and from his acquaintance of fifteen years, or more, says that he has heard persons speak against Klady, as a pilot; but from his own knowledge, having travelled with him on steamboats, believes him to be worthy and competent at this time; witness has made two trips with Klady this season, in bayou Bartholomew, distance of 40 miles, and says he managed the boat with a good deal of judgment.

Signed, JNO. T. STERLING.

Sworn to and subscribed before me, this 7th day of May, 1844.

Signed, N. R. JENNINGS, *Clerk*.

May 9th, 1844.

Benjamin Hosey, witness for libellants, being duly sworn to answer the interrogatories propounded, deposes as follows:

Int. 1. Are you acquainted with Old river; how long have you been acquainted with Old river; where do you reside, and how long have you resided there?

Answer. That he is acquainted with Old river; that he has been acquainted with it from 1828 to the year 1835, and from the year 1842 until the present season; that he resides now in bayou Ellsworth, in the parish of Point Coupee, and that he has resided there for about a month.

Int. 2. Do you know where the Buckeye was sunk; was she sunk in Old river?

Answers. That he knows where the Buckeye was sunk, and that she was sunk in Old river.

Int. 3. Have you ever observed any effect upon Old river by the ebbing and flowing of the tide? If yea, please state particularly at what times, the stage of water, what was the effect, and whether you particularly observed it.

Answers. That he has observed the effect upon Old river from the ebbing and flowing of the tide, or what witness conceived to be the tide; that he observed it in the morning and in the evening; in the morning it would be lowest, and in the evening it would be highest; the water, during these observations, was at a low stage, compared to what it is now; it was in the month of August, when the water is generally at its lowest stage; that he also made these observations as to the ebb and flow of the tide, and this was particularly in the year 1832; and he also made particular observations in June, 1843, and in April, 1844. In the year 1843, witness states that the stage of water was high, when he made the observations.

Int. 4. Has the tide any influence upon Old river at an ordinary stage of water in the Mississippi river?

Answers. That it has more influence upon Old river at an ordinary stage of water in the Mississippi, than it has at a high stage.

Int. 5. Did you ever observe the effect of the tide on the Mississippi, or on the Atchafalaya? If yea, when, where was it, and what the effect?

Answers. That he never observed the effect of the tide at any other place than upon Old river.

Int. 6. How much do you think is the fall of Red river, at the upper mouth of Old river, when the Mississippi is at low water?

Answers. That he judges it to be from eighteen to twenty inches.

Cross-interrogatories.

Int. 1. Please state particularly how you derived any knowledge you may have of tides.

Answers. That his attention was first drawn to it by his father; and that in the year 1848, when he particularly observed it, he cut a notch in a tree for the purpose of discovering the fact, as the water was then high, and he was very anxious for it to get lower, fearful that it might run over the bank; in the morning he found the water to be about half

an inch below this mark, and in the evening half an inch above it; this was noticed by him for seven or eight days.

Int. 2. Might not such appearances as you took for tides have been caused by wind or by eddies?

Answers. That, if it had been caused by wind or eddies, it would not have occurred, he thinks, more than once or twice, or thereabouts; but this change appeared to be regular, and he observed it when there was no wind.

Int. 3. What facts did you observe, and what experiments did you make, to form your opinion as to the tide influence on Old river?

Answer. That he made no experiments other than those stated, except that, when a south wind prevailed, the effect was to make the water an eighth of an inch higher than it would be if it were calm; his father caused witness to observe the ebb and flow of the tide in 1832, but from that time, until the year 1843, he only observed it generally; in 1843 he tried the experiment with the tree, as above stated.

Signed, BENJAMIN F. HOSEA.

Sworn to and subscribed before me, this 9th day of May, A. D. 1844.

Signed, N. R. JENNINGS,
Clerk and acting commissioner.

John Clements, witness for libellants, being sworn to answer the interrogatories propounded to him, as already expressed in the interrogatories to Benjamin Hosea, deposes:

1st interrogatory. To the first interrogatory, witness answers, that he is well acquainted with Old river, and has known it for about four years; that he resides at bayou Moreau, upon the banks of Old river; and that he has resided there for about four years.

Int. 2. Witness answers, that he knows where the Buckeye was sunk, the place being distinguished by a piece of stancheon sticking out of the water; and that she was sunk about three miles from the mouth of Old river.

Int. 3. Witness answers, that he has observed the ebbing and flowing of the tide upon Old river; that he observed, in the year 1840, during the months of May, June, and a part of July; that he kept a ferry at bayou Moreau, and that he had a mark every day for the purpose of discovering what was the ebb and flow of the tide; that the tide varied from $\frac{2}{4}$ to $\frac{3}{4}$ of an inch; that the stage of water in the Mississippi was then about 8 feet lower than it is now, and about 12 feet lower than high water mark; when the river was high, witness observed that the tide was much less than it was at an ordinary stage, being a scant quarter of an inch.

Int. 4. To the 4th interrogatory, witness answers, that at an ordinary stage of water the influence of the tide is about half an inch, to the best of his knowledge.

Int. 5. Witness answers that he has observed the effect of the tide on the Mississippi river, between Fort Adams and bayou Sarah, and at

the lower mouth of the Atchafalaya, at Grand river; that he observed it in the fall of 1828, and since at different times; and that he observed the tide to vary from five to six inches at Grand river.

Int. 6. Witness answers, that he judges the fall of Red river, at the upper mouth of Old river, when the Mississippi is at low water, to be from eighteen to twenty inches; that he judges so from the appearance of the current.

Cross-interrogatories.

Int. 1. Witness answers, that he formerly lived in tide-water countries—in Delaware, Maryland, and Pennsylvania—and that he was familiar somewhat with it for that reason; that in the morning, when the observations, as before stated, were made by him, the river was from ¼ to ¾ of an inch lower than it was in the evening.

Int. 2. Witness answers, that he does not think it would have been caused by winds or eddies—the appearances of the change of the river; the wind, he says, might have increased it, but that these changes were constant and regular when there was no wind, and had to his mind all the appearance of tide, as he had observed in other tide-water countries.

Int. 3. Witness answers, that he has no other facts, and made no other experiments, than those stated; that his opinion was formed as to the ebb and flow of the tide in Old river, from being in a position where he was led to observe it for more than two months, as before stated.

Signed, JOHN CLEMENTS.

Sworn to and subscribed before me, this 9th day of May, A. D. 1844.

Signed, N. R. JENNINGS, *Clerk*,
And Acting Commiss'r.

Witnesses for libellants.

May 13*th*, 1844.

Jacob R. Snyder and Isaias Waits, being duly sworn to answer the interrogatories propounded to them, deposes as follows:

Int. 1. Do you know anything of the steamer Buckeye; do you know how much the plaintiffs gave for her?

Answers. That they understood from Capt. Brennan, who sold the Buckeye, and from Capt. Caldwell, who purchased her, that the latter gave three thousand dollars for her.

Inter. 2. Do you know anything of any repairs upon the steamer Buckeye; at whose request were those repairs put on the vessel; when were those repairs made; who commanded the vessel at that time?

Answers. That they know of repairs being made upon the steamer Buckeye; that these repairs were put upon that vessel by the request of Capt. Caldwell, in the month of September, 1843, and that Capt. Caldwell commanded the vessel at that time.

Int. 3. Do you or not know the extent and value of those repairs? If yea, please state the value.

Answers. That they do know the extent and value of the repairs above mentioned, and to the best of their knowledge and belief, the ex-

tent and value of these repairs, as put upon her by Capt. Caldwell, was from one thousand to twelve hundred dollars.

Int. 4. What is your profession or occupation; are you or not competent to judge of the value of the repairs made upon the vessel?

Answers. That they have kept a lumber yard for steamboats; that their profession is that of carpenters; and that they consider themselves competent to judge of the value of the repairs made upon the Buckeye. Isaias Waits states that he now keeps a lumber yard, and Jacob R. Snyder states that he is no longer interested in a lumber yard, but attends solely to his trade as carpenter.

Cross-interrogatories.

Int. 1. How long had you known the Buckeye previous to her being lost?

Answers. That they knew the Buckeye three or four years previous to her being lost.

Int. 2. When was the Buckeye built; how long had she been running before she was lost; how old were her engine and boilers and machinery?

Answers. *Witness answers*, that they do not know when the Buckeye was built, nor how old her engine, boilers, and machinery were; and consequently they do not know how long she had been running before she was lost.

Int. 3. State the exact nature and extent of the repairs made to her, and at what time they were made?

Answers. That she had new chocks put down, new beams put in, and new plank-shear, nosing, wheel-house repaired, and wheels partly filled anew, decks caulked and repaired, her hull repaired from light water-mark, new sheathing put down before the boilers, cabin decks and guards repaired, new fore-fronts, and the machinery was overhauled and thoroughly repaired. Her hull and cabin were also repainted; a new cook stove and yawl were added to the Buckeye. Witness does not know the value of the new cabin furniture, or the outfit of the cabin. The repairs above mentioned were commenced about the middle of September, 1843, and were continued until between the 10th and 19th of October.

Int. 4. What price did the plaintiffs give for the Buckeye; did you ever hear either of them say what the amount was for which she was bought, and what was it?

Answers. Witnesses have already stated all they know about the purchase of the Buckeye, and being specially interrogated as to their answer to the first interrogatory in chief, Esaias Waites states, that he heard from Captain Brennan, or Captain James, he does not exactly remember which, who sold the Buckeye to Captain Caldwell, that they sold her to him for three thousand dollars. Witness also heard Captain Caldwell say, that he had given three thousand dollars for her. Jacob R. Snyder states, that he heard it only from Captain Caldwell, that he had given three thousand dollars for the Buckeye.

Int. 5. Please state anything within your knowledge material to the defendants.

Answer. That they know of nothing that would be material to the defendants.

Signed, ESAIAS WAITES,
J. R. SNYDER.

Special interrogatory in chief to Jacob R. Snyder.

Did you or not superintend the repairs to the vessel; if yea, please state whether you were not well acquainted with the Buckeye; have you been long connected with steamboats; do you consider that you are a pretty good judge of the value of steamboats; how much do you estimate the value of the Buckeye to have been at the time she was sunk?

Answers. That he did superintend the repairs done to the Buckeye, and that he was at that time well acquainted with the Buckeye; that he has been connected with steamboats for about eight years, and considers himself a pretty good judge of their value; that he was on board of her about three months before she was sunk—did not see her afterwards. That he considered her value then to be upwards of four thousand dollars.

Signed, J. R. SNYDER.

Sworn to and subscribed before me, this 16th day of May, 1844.

Signed, N. R. JENNINGS,
Clerk and Comm'r.

May 14*th*, 1844.

Robert Spedden and Richard L. Robinson, being duly sworn to answer the interrogatories propounded to them, depose as follows:

Int. 1. Do you know the parties to this suit?

Answer. To this interrogatory they answer, that they do know the parties to the suit.

Int. 2. What is your business or occupation, and in whose employment are you; are you or not inspectors of steamboats?

Answer. To this they answer, that their business or occupation is the inspection of ships and steamboats for underwriters, and they are employed by them.

Int. 3. State fully all you know of the condition and sea-worthiness of the steamer Buckeye, lately sunk. Did you ever inspect her during the year 1843; if yea, state when, and at whose instance; did you or not chip and examine closely all her timbers in the year 1843; if yea, what time in that year; what was her condition as to sea-worthiness at the time of those inspections?

Answer. They answer, that in the month of April, 1843, they inspected the steamboat Buckeye for Capt. Brenham, who then was about to purchase her. They spent a long time in cutting into her plank and timbers, and discovered her to be sound; they recommended her to

Capt. Brenham to be purchased, and he did so purchase her; she then run the remainder of the season, without loss or difficulty, in the Vicksburg and New Orleans trade.

Cross-interrogatories.

Int. 1. If you inspected the steamboat Buckeye, did you or not give her a thorough examination with a chisel and mallet, or any other sharp instrument, or did you bore her plank or timbers with an auger?

Answers. To the 1st cross-interrogatory witness answer, that they did give the Buckeye a thorough examination with chisel and mallet, but did not bore her plank or timbers with an auger.

Int. 2. If you observed the Buckeye to have been repaired, after Capt. Caldwell became part owner, to what extent had those repairs been made, and to what amount of cost?

Answers. To this witness answers, that they did understand that the Buckeye had been repaired, after Capt. Caldwell took her; but that they did not look to, nor examine, the nature and extent of those repairs.

Int. 3. Was not the Buckeye eight or nine years old, and if so, are not boats of that age generally worn out and unsafe?

Answer. To this they answer, that the Buckeye was built in 1837, and, consequently, in 1843, was six years old; boats at that age are usually worn out; but this boat was an exception.

Signed, ROBERT SPEDDEN,
RICH'D L. ROBERTSON.

Sworn to and subscribed before me, this 14th day of May, 1844.

Signed, N. R. JENNINGS, *Clerk, &c.*

Interrogatory propounded by the libellants to Richard L. Robertson, individually.

Did you not observe the condition of the Buckeye, as to sea-worthiness, in the month of February, 1844? What was her condition at that time? Did she or not appear to have been repaired since the inspection in 1843? What caused you to observe her in the month of February, 1844?

Answers. That he did observe the condition of the Buckeye, as to sea-worthiness, on or about the 27th day of February last past, and although she was more than six years old at the time, and had much wet in the hold, witness believed that wet to be caused by leaks at the beam fillings, which is very usual with cotton running boats, and not by any material defect in the boat itself. Witness understood that the boat had been repaired by Captain Caldwell, since the inspection in 1843, but did not enquire into the nature and extent of them at that time. Witness inspected the boat in the month of February, because application had been made to the Perpetual Insurance Co. for $1500 insurance on the risk. Witness considered her, at that time, in a sea-worthy condition, and, consequently, recommended that the risk be taken out; and witness doubts not that she would have safely run the season out but for some untoward accident.

Cross-interrogatory to the above.

If you inspected the Buckeye in February last, did you or not cut her timbers and plank? If yea, were they sound? And did you or not find the hold of the Buckeye in a very filthy and dirty condition?

Answers. That he did inspect the Buckeye in February last, and he did not cut into her timbers or planks, but walked around her hold with a light, and he doubts not the general soundness of her planks and timbers. Witness did find her hold in a dirty condition at the time, and found fault with the mate for suffering it to be so.

Signed, RICH'D L. ROBERTSON.

Sworn to and subscribed before me, this 14th day of May, 1844.

Signed, N. R. JENNINGS, *Clerk*.

May 16*th*, *A. D.* 1844.

Joseph Ingle, witness for the libellants, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Int. 1. Were you on the steamer Buckeye when she was sunk?

Answers. That he was on the steamer Buckeye when she was sunk.

Int. 2. Had she or not the usual signal lights of boats at the time of the collision?

Answers. That at the time of the collision she had up the usual signal lights of boats.

Cross-interrogatories.

Int. 1. Were you up at the time of the collision? If yea, where were you, and how employed?

Answers. That he was up at the time of the collision; that he was on the hurricane deck, and rang the alarm bell of the Buckeye.

Int. 2. Could not the collision have been avoided if the Buckeye had kept up the island shore, instead of attempting to cross when she did?

Answers. That he does not know that the Buckeye was on the island shore at all; that he did not see her there; that when witness rung the alarm bell, the Buckeye was nearest the bar shore.

Int. 3. Have you not heard Capt. Caldwell, or Mr. Smith, owners of the Buckeye, say, that the collision would not have happened if the other pilot had been at the wheel, or that it was owing to the fault or negligence of Klady, or words of similar import?

Answers. That he never heard Capt. Caldwell nor Mr. Smith say any such thing.

Int. 4. Did not the Buckeye leak a good deal during the last trip, and was she not leaking considerably when the collision occurred? Were you not obliged to keep the pumps almost constantly going?

Answers. That the Buckeye did not leak much during the last trip; that she leaked no more than she had done during the whole season, which was not greater than usual with boats upon which witness had been at other times; that she was not leaking considerably when the

collision occurred; that the pumps were tried three or four times, only, during a four-hour watch.

Int. 5. Was she not very much loaded for so old a boat?

Answers. That she had a pretty good load in, but that she was not overloaded.

Int. 6. Was she not an old boat; and were not her boilers and engines very old and much used?

Answers. That she was a boat about six years old; that her boilers were put in during the fall of 1839, and her engines, when the boat was built; witness does not know much of boilers and engines himself, but he heard only the engineers on the boat say, that they were in very good condition.

(Signed) JOSEPH his ✕ mark. INGLE.

Sworn to before me, this 16th day of May, A. D. 1844.

(Signed) N. R. JENNINGS, *Clerk*.

May 16*th*, 1844.

Washington Berry, being duly sworn to answer the interrogatories propounded to him in the above entitled case, deposes as follows:

Int. 1. Have you or not had opportunities of becoming acquainted with the value of steam engines and boilers? Do you consider that you are capable of forming an estimate of their value? How did you acquire a knowledge of the value of such articles? Do you know the character of the engine and boilers of the steamer Buckeye before she was sunk by the De Soto? What were your means of knowing their character?

Answers. That he has had opportunities of becoming acquainted with the value of steam engines and boilers, and considers himself capable of forming an estimate of their value. That he acquired a knowledge of the value of such articles by serving his time in working at the business of building engines, and since by running them. That he knew the character of the engine and boilers of the Buckeye before she was sunk by the De Soto, from the fact that he had run the boat as engineer when she was commanded by Capt. Brennam, which was not over 6 or 8 months before she was sunk. That, the trip before she was sunk, witness looked at her engines and boilers, and saw that they were in good condition.

Int. 2 and 3. Do you know the character of the engine and boilers of the steamer Buckeye before she was sunk by the De Soto? What were your means of knowing their character? What is your estimate of the value of the engine and boilers of the Buckeye? How much would the building of such an engine and boilers cost? Had they been much injured by use? How much do you estimate the entire value of the Buckeye?

Answers. That he estimates their value to be about twenty-five hundred dollars, and that the building of such an engine and boilers would

cost about five thousand dollars. The engines and boilers had not been much injured by use. That her present boilers were put in since the Buckeye blew up, the cost of which witness does not remember. That he estimates the entire value of her to be about four thousand dollars.

Int. 4. Do you or not know the character of the pilot-house on the Buckeye; was it such a pilot-house as steamboats generally have; were there or not sashes filled with glass on both sides, right and left of the pilot-house; were there any blinds to those sashes; could not the pilot see on either side of the boat without removing any sash?

Answers. That he knows the character of the pilot-house, and it was such a one as steamboats generally have; the sashes of the pilot-house were filled with glass on both sides, right and left; witness does not recollect of ever having seen any blinds to these sashes, and the pilot could see on either side of the boat without removing any sash.

Cross-interrogatories.

Int. 1. How long can such boilers and engine as the Buckeye's serve with safety?

Answers. That if the engines and boilers of the Buckeye were properly taken care of, they would serve with safety for twelve or fifteen years.

Int. 2. Do you not know that the Buckeye was an old boat, pretty well worn out, and that her engine and boilers were pretty well used, and incapable of serving much longer?

Answers. That he knows the Buckeye was some five or six years old; that she was not worn out; and that her engine and boilers were in such a condition that witness thinks they would have lasted five or six years longer, with safety, if properly taken care of.

Signed, W. BERRY.

Sworn to and subscribed before me, this 16th May, 1844.

Signed, N. R. JENNINGS, *Clerk.*

Samuel L. Coy, for libellants, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

(Interrogatories same as to W. Berry above.)

Int. 1. Answers. That he has had opportunities of becoming acquainted with the value of steam engines and boilers, and considers himself capable of forming an estimate of their value; that he acquired a knowledge of such articles by having worked at the business of making engines.

Int. 2. That he had some idea of the character of the engine and boilers of the Buckeye, before she was sunk by the De Soto; that his means of knowing their character was by looking at them frequently, and conversing with the engineer about them.

Int. 3. Answers. That he estimates the value of the Buckeye's engines and boilers at twenty-eight hundred dollars; he thinks that the building of such engines and boilers, at the present day, would cost about six thousand dollars; that he does not consider they were mate-

rially injured by use; that at the time the Buckeye was sunk, he would estimate her value at about four thousand dollars.

Int. 4. Witness answers. That he never observed the pilot-house particularly; that it seemed to him to be such a pilot-house as steamboats generally have; witness does not recollect the sashes particularly, never having had any reason to direct his attention particularly to them, and he cannot state whether there were any blinds to them or not. From the observations that witness occasionally gave to the pilot-house, he would say, that the pilot could see on either side of the boat without removing the sashes, although he cannot state positively.

Cross-interrogatories.

Int. Answers. That he thinks such boilers and engines as the Buckeye's would serve with safety for twelve years.

Int. 2. Answers. That he does not know how old the Buckeye was; that she was pretty well worn; she still, however, bore inspection, which would not have been the case had she been worn out; her boilers and engines were not so much worn that with ordinary care they would not have lasted much longer; witness has known such boilers and engines to have worn out two or three boats like the Buckeye.

Signed, SAMUEL L. COY.

Sworn to and subscribed before me, this 16th day of May, 1844.

Signed, N. R. JENNINGS, *Clerk*.

May 20th, 1844.

Albert Edwards, witness for libellants, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Int. 1. What is your occupation; have you ever acted as pilot or master of a steamboat; if yea, for how long?

Answers. That his occupation is that of a pilot, and that he has been acting as pilot or master of steamboats for twenty years.

Int. 2. Are you well acquainted with the navigation of Old river, from the mouth of Red river; how long have you been engaged in the navigation of vessels from New Orleans to Red river and Ouachita river?

Answers. That he is well acquainted with the navigation of Old river from the mouth of Red river; and that he has been engaged for ten or twelve years in the navigation of vessels from New Orleans to Red river and Ouachita river.

Int. 3. Do you know where the Buckeye was sunk by the De Soto, or where the hull of the Buckeye now lies; if yea, please state whether, if she was struck by the De Soto in the place where she now lies, she was in the proper part of the river for an ascending boat; if the De Soto came in collision with the Buckeye at that place, was the De Soto in the proper place for a descending boat; if she was not, where ought she to have been?

Answers. That he knows where the hull of the Buckeye now lies, from the diving-bell being directly over the place where the hull is;

that if she was struck by the De Soto at that place, she was in the proper part of the river for an ascending boat, being the course that witness has always taken with boats piloted by him, especially at night; witness states that the De Soto could not have been in her proper place for a descending boat; that she ought to have been two or three hundred yards nearer to the bend side.

Int. 4. What is the rule of boats meeting on the river; which takes the bend, and which the bar—the ascending or descending boat?

Answers. That the ascending boat takes the bar, and the descending boat the bend side.

Int. 5. What is the object of ringing an alarm-bell when boats are meeting?

Answers. That the object of ringing an alarm-bell is to give notice to boats out of their place to go to it.

Int. 6. What is the general reputation of McGuire as a pilot; what is the reason that Captain Kimball has kept McGuire in his employment?

Answers. That the general reputation of McGuire, as a pilot, is, that he is very near-sighted, and that he cannot see well at night; that he has not been a safe man at night for five or six years; that in the daytime he understands the navigation of the river, and pilots very well; that he has not been employed, to witness's knowledge, on the river as a pilot, on account of his eye-sight, for four or five years, until Capt. Kimball employed him; and the reason why Capt. Kimball employed McGuire was, that he got him for a less price than is paid first-rate pilots; this fact witness has learnt from general report; this he states after making his answer as above given.

Cross-interrogatories.

Int. 1. If the Buckeye reached the spot where her hull now lies, by crossing the river from the island shore at that point, was she in her right course in so doing?

Answers. That if the Buckeye reached the spot where she now lies, by crossing the river at the island shore, from the island shore to the point on the main land, she was in her proper place, or near about it; that if he had been on an ascending boat, and running on the island shore, and saw a boat descending, he would have run in the direction taken by the Buckeye; that is to say, he would have made for the point.

Int. 2. How old a boat was the Buckeye, and how long had she been running?

Answers. That he believes the Buckeye to have been five or six years old, and that she has been running for that length of time.

Int. 3. If you know any thing favorable to the defendants, you will state the same fully and particularly, as if interrogated thereto.

Answers. That he knows nothing favorable to the defendants.

Signed, ALBERT EDWARDS.

Sworn to and subscribed before me, this 20th day of May, 1844.
Signed, N. R. JENNINGS, *Clerk.*

May 22d, 1844.

A. S. Robertson, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Int. 1. Do you know who were the owners of the steamer Buckeye at the time she was sunk by the De Soto?

Answers. That, to the best of his knowledge and belief, George H. Caldwell and James Smith were the owners of the Buckeye at the time she was sunk by the De Soto?

Int. 2. Did A. S. Robertson sell out his interest in the boat to George H. Caldwell? If yea, when did he do so.

Answers. In answer to this interrogatory, witness states that he paid seven hundred and fifty dollars for one-fourth interest in the steamer Buckeye; but that the same payment was made for the benefit of his nephew John T. Robertson, who, in consideration of said amount being paid, obtained the situation of second clerk on the said boat. Deponent states that he never was himself wholly nor partly interested as owner of said boat; that no papers were ever signed by him to that effect, nor by any one authorized by him to do so; that afterwards a disagreement having existed between John T. Robertson and James Smith, one of the owners of the Buckeye, George H. Caldwell took the interest of said Robertson, in the latter part of January, or about the first of February, and executed his notes therefor for $375 each, payable on the 1st May, or the 1st June following, bearing ten per cent. interest, from date, to the order of J. H. Brenham.

Int. 3. What did said Caldwell give said Robertson for his interest? What was the interest of said Robertson?

Answers. Witness states that his answer to this is contained in his answer to the second interrogatory.

Special interrogatory to A. S. Robertson.

What was the price given for the Buckeye at the time she was purchased by said Robertson, Geo. H. Caldwell, and Smith? When was the purchase made?

Answers. That the price given was three thousand dollars; and that the purchase was made in the month of September, 1843.

Signed, A. SIDNEY ROBERTSON.

June 5th, 1844.

Joseph A. Sproule, witness for libellants, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Int. 1. Were you, or were you not, acquainted with the steamer Buckeye, before she was sunk by the De Soto? If yea, at what price did you estimate her value before she was repaired? Did you offer to buy her about the time Mr. Caldwell and others purchased her of Brenham? What price did you offer Brenham for her?

Answers. That he was acquainted with the Buckeye before she was

sunk by the De Soto; states that, as a member of the house of Sproule and Huston, he offered twenty-five hundred dollars for her before she was repaired; and that he estimated her value to be then about three thousand dollars; Sproul and Houston afterwards, about the time that Mr. Caldwell purchased her, offered Brenham three thousand dollars for her; one thousand of which to be in cash, the balance on time. Captain Caldwell offered eighteen hundred dollars the first cash payment, and thereby got the refusal, and became the purchaser of her from Captain Brenham.

Int. 2. Did you examine the condition of the vessel? Were the timbers of her hull sound? If you did not examine her, who examined her for you?

Answer. Witness, in reply to this interrogatory, states that he himself examined her sufficiently to induce him to believe that she was worth the three thousand dollars offered; that he did not examine her timbers particularly. Capt. Wood examined her by witness's request and direction, who stated to witness that she was fully worth the money offered.

Int. 3. How much do you think the vessel was worth after she was repaired? How much at the time she was sunk?

Answers. That he thinks she was worth about one thousand dollars more after being repaired; that her value, at the time she was sunk, he considers about five thousand dollars, taking into consideration the trade in which she was employed. That if she belonged to witness, he says that he would not have taken six thousand dollars for her.

Signed, JOSEPH A. SPROULE.

Sworn to and subscribed, before me, this 5th day of June, 1844.

Signed, N. R. JENNINGS,
Clerk, &c.

Testimony for libellants, taken before Recorder Baldwin, and filed on the 7th June, 1844, as evidence on behalf of plaintiffs in this suit.

Timothy Dustin, being duly sworn, deposes and says: That deponent is a pilot, and has been engaged in the business ever since 1837, and on Old river, where the Buckeye and De Soto came into collision; and deponent has been there since, and seen some fragments of the Buckeye sticking out above the water, and believes the Buckeye was in her proper position ascending the river, just about the place where deponent generally runs boats, seldom or ever going nearer the bar on the left side ascending the river. Deponent thinks the hull of the Buckeye is nearer the willows, on the bar side, than the shore on the island side. Deponent thinks there are two or more snags further out in the river than she is, , some inside of her. Deponent generally, after entering Old river with a boat, ascends along the channel, near the island, to about three or four hundred yards above the island point, and then turns over towards the bar, following round the bar to the point above, about one mile above where the hull of the Buckeye now lays; and believes such is the course of boats generally; and according

to that course the Buckeye was in her right position. Deponent does not think the place where the Buckeye now lies would be the right position for a boat descending the river, especially meeting another boat. Deponent believes he would be at least 250 yards out of his proper position, if descending the river, generally running much nearer the island shore. It is the usual custom for an ascending boat to close to the bar as near as safe, and allow the descending boat to approach the bend.

Cross-examined.

Deponent saw nothing of the collision between the boats. The advantage of running the bar is the gain of distance; deponent has never sounded around the bar, but only at the mouth.

Signed, TIMOTHY DUSTIN.

Sworn to and subscribed, before me, this 7th March, 1844.

Signed, J. BALDWIN, *Recorder*.

Franklin Keeling, being duly sworn, deposes and says: He is the commander of the steamboat Fort Towson, and engaged in the Ouachita trade; and been familiar with Old river about ten years; and has descended Old river since the loss of the Buckeye, and seen something like a spar, standing up out of the water, belonging to the Buckeye, and supposed it to be about one-half of the width of the river from the willow bar side, and lies about where a star on a map, now present, would indicate. Deponent believes that about the usual position for boats ascending, but would be a little too near the bar for boats descending. Deponent does not consider there would be any danger in going something nearer the bar, there being plenty water there. Deponent does not know of any snags on the bar, not having observed any, or looked out for any.

Cross-examined.

Witness knows R. Klady, pilot of the Buckeye, who was reputed to have been at the wheel at the time of collision, and has known him as such for the last four years. There are other pilots whom deponent would employ in preference to Klady; has never known him employed by any other than Capt. Caldwell; when deponent first knew him he was in Capt. Caldwell's employ; cannot say any thing of his general reputation as a pilot. Witness commanded the Buckeye the first trip she made this season, on which Klady was acting as pilot, and thought he had a correct knowledge of the river. Witness has heard it rumored, previous to the loss of the Buckeye, that she would sink in consequence of her being an old boat. It is a general rule with deponent, on meeting a boat, whether ascending or descending, to stop the engine, and back, if approaching near to her. It is customary for deponent to carry one signal light under the hurricane deck, over the boiler deck, and never had more, and does it for safety; deponent has been told there is a law to that effect, but has never examined it. Witness believes it would contribute to the safety of life and property on steam-

boats, if the captain, pilots, and engineers, were first examined by competent persons, and notified as competent before entering on such duty. Witness believes that collisions of steamboats result from the want of care in a majority of cases, and sometimes for the want of skill. Witness thinks the suggestion of a board of examiners, to test the skill, care, and experience of those in command of steamboats, to be the best remedy against collision or accident; and the examiners could be remunerated by a tax on the boats.

F. Keeling was introduced on the part of libellant or complainant.

Signed, FRANKLIN KEELING.

Sworn to and subscribed, before me, this 9th March, 1844.

Signed, J. BALDWIN, *Recorder*.

Wm. Switchzer, being duly sworn, deposes and says, he is a pilot, and as such, engaged on Fort Towson, running in Ouachita trade, and is well acquainted with Old river, and been in Old river since the loss of the Buckeye, and saw some fragments of her above the water; came down on a steamboat at the time of seeing her, and landed along side of the cabin of the Buckeye, lying in the bend and fastened to the island. The place where the fragments of the Buckeye were seen, was in the position where deponent generally runs going up the river; generally runs along the bar, on the left hand side, going up the river; believes the Buckeye lies one-half of the distance from the left hand shore ascending, judging so from where deponent was, $\frac{1}{4}$ of a mile off; there are three or four snags on the bar, some outside of the Buckeye, deponent believes; on ascending Old river, deponent, at the lower point of the island, takes the centre of the river, and keeps it till he gets up a short distance, and then inclines to the left hand side or bar; then runs up round the bar to the point above the bar on the same side; the bar is very wide; boats descending usually keep nearest to the island, about the middle of the river, if there is no boat coming up. Deponent does not think the place where the Buckeye now lies, the right place for a boat to run in descending, she being two or three hundred yards nearer the bar shore, at least, than she should be; that is, if she was meeting another boat. If a boat was to run up Old river, on the island side, one and $\frac{1}{2}$ miles, there would be no inducement at all to cross over on to the bar side, and thinks it would be an extreme piece of folly in any one to do so. The advantage of running the bar side of Old river is, the distance being shorter, saves a little distance; to run around the bend would lose some distance of course.

Cross-examined.

It was the mate of the Buckeye, deponent believes, that pointed out the Buckeye's fragments; it was an object sufficiently large to be seen two or four hundred yards off; that was as close as deponent went; saw it distinctly; deponent supposed it to be stationary; there is no current there, and from what was said to deponent, and never having seen it there before, supposes it was a fragment of the Buckeye. There is a gradual bend of Old river on the island side; witness has held his boat

in the middle of the river, or nearest to the bend, descending, when he saw no other boat ascending on the island shore; he would stop the engine and keep her in the same direction, whether in the middle or nearest to the bend.

his
WILLIAM ⋈ SWITCHZER.
mark.

Sworn to and subscribed before me, this 8th March, 1844.
Signed, J. BALDWIN, *Recorder*.

Benjamin McKenney, being duly sworn, deposes and says, that he is a pilot in the Red river trade, and well acquainted with the navigation of Old river; witness prefers going up the upper mouth; but if going up the lower mouth, would hug the bar, the nearest way; there being little or no current in coming down, he would keep in the deepest water, any where near the middle of the river; and, if laden with cotton, never run near the bar, unless the water was very high; if coming down Old river, at a mile or two above its mouth, deponent would keep in the bend; it is a general rule among steamboat men, that boats descending should run the bend, and those ascending to hug the bar; witness has known, ever since 1837, David McGuire, pilot of the De Soto, personally, and by character since 1834, and his general character as a pilot, and never heard any one speak against his pilotship, or objections made to him as a pilot; but that some of the pilots thought him too weak to handle a large boat.

Cross-examined.

D. McGuire is reputed one of the very best pilots on the river; witness says that a boat, drawing six feet of water, could run within two hundred yards of the willows, on the bar of Old river, for two miles from its mouth; McGuire has the reputation of being a very cautious and prudent pilot, and never heard of any accident happening to him before.

Chief examination resumed.

Witness says there are several snags on the willow bar in Old river; how many, witness does not know; never get under water, that he is aware of, and does not consider them dangerous; are large and visible, and, for a person acquainted with them, easily avoided. If deponent was to run a boat going up outside of the furthest snag, he would not be in a proper position; between the furthest snag out and the bar in, considers the proper place for a boat ascending. It is the custom, on Red river, for boats ascending to get under the point on meeting another boat and stop her engine; for the descending boat, there is no particular regulation; witness supposes Old river over ¾ of a mile wide, where the collission of the Buckeye and De Soto took place; witness is firmly of opinion that all steamboat captains, pilots, and engineers, should be fully qualified before entering on duty as such, and applicants for such situations should be fully examined before allowed to perform; witness

believes that the collissions of steamboats are frequently the want of skill or care of those engaged in their management; witness is not acquainted with Klady, the pilot on the Buckeye, nor with his character as a pilot; with the exercise of proper prudence, and with skill and knowledge on the part of the officers, witness believes no collission of steamboats would take place.

his
BENJAMIN ⋈ McKENNEY.
mark.

Sworn to and subscribed before me, this 16th day of March, 1844.
Signed, J. BALDWIN, *Recorder*.

Elisha Austin, witness for plaintiff, being duly sworn, deposes and says, he is a pilot on the steamboat Agness, running into the Ouachita river; is not interested in either boat; witness is acquainted with Robert Klady, and began to learn the river, about six years ago, when he did; and has known him ever since, and before, and has always heard him reputed a competent pilot between the Ouachita river and New Orleans; a man of sober and steady habits; witness, on Friday morning, passed down Old river, and saw two stanchions, as deponent was told, which were rather below where the cabin of the Buckeye was fast, and on the opposite side of the river. Witness supposed them a part of the wreck of the Buckeye; knows they were not snags, and thinks they were attached to the hull of the Buckeye; they appeared about two hundred yards from the willow bar, and about $\frac{2}{4}$ of the width of the river from the island side, which (river) is about $\frac{1}{4}$ of a mile wide; that is what Old river is generally called at that particular place. Witness supposes these two stanchions to be about $1\frac{3}{4}$ mile from the *main* point of the island.

Witness is personally acquained with David McGuire, and has known him for two years.

What is Captain, or David, McGuire's general reputation, among steamboat men, as to his religion?

To this question, the counsel of defendant objected, as eliciting hearsay evidence, and requested his objection be noticed for the decision of the court.

Witness has heard some few to remark, he could not see well at night; does not know it to be a fact.

Cross-examined.

It will be six years, in the fall of this year, since Klady and witness first commenced to learn the river, and with Capt. Caldwell, both going together on his boat for that purpose, on the steamboat American. Witness has been on several other boats since that time, and has been, in all, six or eight months with Klady; were together as pilots on the steamboat Nashville in October, 1842. Witness and Klady were on board the American as steersmen, learning to be pilots, about seven months together, when she was burnt, viz: from the month of December till the 10th July, making, all together, about nine months that wit-

ness was with Klady. Witness and Klady were both on board of the Nashville when she was sunk, and Klady at the wheel at that time; the river was low at the time, snaggy and unavoidable accident. Witness thinks it occurred about the first of December, 1842; she was then commanded by Capt. Caldwell, who was on the hurricane deck at the time thereof. The steamboat American was burned at a wood yard, at night, (3 o'clock, A. M.) under command of Capt. Caldwell, who was part owner thereof, on her return trip, (had about seven or eight hundred bales of cotton on her—about as much as she would carry. Witness understood, and gave this answer as concerns the Nashville, which is so far correct.) But the American was burned also on her return trip, no load on her, perhaps five or six bales. Klady has been considered and known as a pilot for four years; does not know how long he has been with Capt. Caldwell; thinks he was on the Hannibal, Captain Phillips; how long, witness does not know. Witness saw Captain Caldwell on the Hannibal, but whether as officer, passenger, or owner, witness does not know. Witness has heard it said that McGuire is an extremely good and careful pilot—from his own knowledge, he cannot speak. Witness knows what are before called stanchions are not snags, because there are few snags about there, there being three in number, and just above. These three snags being about on a line with the stanchions, and about the same distance out in the river, viz: two hundred yards from the bar shore, or from the willows. Steamboats descending Old river usually keep to the island shore, pretty close to the island; no snags on the island side; those ascending hug the bar. Klady had been about three years as a deck hand on a steamboat before he commenced to learn as a pilot, and before that as an overseer on a plantation.

Chief examination resumed.

Witness first stated his belief of Klady's being six or eight months with him; but, on examining dates, finds it was nine months.

When you said it was $\frac{1}{4}$ of a mile wide, did you not mean a mile and a quarter?

Answers. It was a quarter deponent meant; some say it more, others less; witness thinks it is wider at this stage of the water, which is not high; the distance from the point of Red river island to the Atchafalaya, is considered from $3\frac{1}{2}$ to four miles.

Signed, ELISHA AUSTIN.

Sworn to and subscribed before me, this 10th March, 1844.

Signed, J. BALDWIN, *Recorder*.

Joseph Ingle, being duly sworn, deposes and says, he was the mate of the steamboat Buckeye, and was on her as such, and on watch *wen* she came in collission with the steamboat De Soto, on Friday morning last. After entering Old river, and just passing the point of the island, deponent was engaged in stowing away freight recently received. Deponent then came up on the hurricane deck, the boat was then running up near the bar, as steamboats generally run, on the left hand side as-

cending, and continued to run the bar side of the river until about 1½ or 2 miles from the point of the island, when deponent perceived a boat descending, about 150 or two hundred yards distant; we were running round the bar, and she was coming quartering towards us. Deponent then went forward, on the hurricane deck, and rang the alarm bell, by striking it four or five times, and at the same time said to the other boat, "where are you going?" Some one on which replied, "hold the other way." Deponent ordered the pilot to stop her, then to back her, as she was coming into us; the engine was stopped, but can't say whether she was backed or not; there was such confusion, the boats coming together.

The direction of the Buckeye was lying for the point, at a very slight angle, the other boat approaching us, quartering at an angle of 45 degrees, and struck the Buckeye on the starboard bow, about half way from the jackstaff to the forward hatch, the distance between these two points being about 25 feet. The boat that struck us was the De Soto, and was with the stern of the boat which ran into the Buckeye nearly to the capstan. The De Soto struck a plank on the Buckeye which was reared up on the hurricane deck, and nearer to which deponent was standing; which plank struck deponent, and threw deponent aside, when deponent jumped on to the cotton of the De Soto, which was about six feet distant, which deponent jumped; deponent then went below on the De Soto, and sung out for a line on the Buckeye, but did not get any; the two horses on the bow of the Buckeye were knocked into the hull of the Buckeye at the forward hatch; deponent then jumped up on the cotton again, and ran aft of the De Soto down on to her after guard, and then took a line and threw it on to the Buckeye, and cried out for them to make it fast; some person in the river caught hold of the line, with which deponent and others got him on board of the De Soto. Deponent then went forward, thence got into the Buckeye by a ladder that was thrown out from the De Soto. Deponent then assisted in getting the ladies out of the cabin; so did Captain Caldwell and others. Deponent did not see any of the officers of the De Soto on board of the Buckeye assisting to get the passengers out. Immediately after the collision the De Soto swung round, the stern of the De Soto coming near to the stern of the Buckeye—heads of both pointed up stream; if any inclination, they were pointing towards the point on the left hand side. Deponent has, since the collision, sounded the water where the Buckeye lies, and found her in about six fathom water, and, sounding towards the island, found seven fathom, when the line gave out. Deponent has been running on Old river for about ten years, and is well acquainted with its navigation; and has been on watch several times when passing the point where the Buckeye lies, and always made it a practice to run in the same position, and several times this season, and invariably run the same; to run in the bend would lose a considerable distance. If passing up Old river, at this stage of water, would take the bar side, leaving the bend for boats descending. The Buckeye, deponent thinks, lies about ⅓ of the river from the bar side, having ⅔ of the river between her and the island side. Deponent re-

mained at the wreck four days, and observed the position of the boat particularly, and the course of other boats ascending and descending; several passed up, and none as near the bar side as the Buckeye now lies; and those descending about ½ way between the wreck and the island shore. There are two snags, one above and the other below; the one below rather outside, or nearer the island; the other, if any thing, nearer the bar shore than the boat. Witness perceived a break of water at the bow of the De Soto when she was thirty feet off, and knew, when she struck us, she would sink us, her headway was so great. The Buckeye was deeply laden. If the De Soto had continued the course she was running when she came in collision with the Buckeye, she would have run into the willow bar.

Cross-examined.

Deponent has been mate of the Buckeye since the 27th September last, and previously, from the 24th March, for a short time. Witness heard from Captain Caldwell that he gave three thousand dollars for the Buckeye, previous to doing any repairs to her. The Buckeye's deck leaked some on her way up, and witness had to shift the freight about in the hull; but did not make more than old boats generally do. She drew a little rising of six feet water; and, when standing still, her guards were free from water, and could not say they would drag the water when under way. The pumps were used about as usual. Witness gave orders to have the pumps tried once or twice in every four hours. The hands were kept at the pumps a short spell, sometimes 15 or 20 strikes, to make them suck. Witness has measured the depth of water several times in the hull, and never found more than four or five inches when loaded by the head, where the water would run forward. Witness believes the Buckeye was built in the fall of 1837. A part of the books of the Buckeye were recovered, and taken possession of by Mr. Smith, the clerk of the boat. None of the officers or crew of the Buckeye were lost, except the watchman. When deponent first saw the De Soto, he was standing on the hurricane deck of the Buckeye, one hundred and fifty or two hundred yards distant from her, and she was then quartering on the Buckeye in the direction of the willow sand bar. Just before going on deck witness saw Captain Caldwell seated in the social hall, conversing with Mr. Smith, he thinks. At the time of the collision Robert Klady was at the wheel of the Buckeye. Witness heard nothing of the tiller rope of the Buckeye being parted until the next morning; nor did the witness hear the pilot, or any other person, mention its being parted. From appearances, witness *belives* it was parted from the wheel by the hull and cabin separating, no part remaining. There was no person at the wheel with the pilot at the time of collision. When witness first saw the De Soto approaching, deponent rung the alarm bell; about half a minute after the engine bell was rung, and the engine *stoped* immediately. Witness then ordered the engine backed; but cannot say whether she was backed or not. Witness never heard there was any misunderstanding about the backing

bell. Witness did not see any damage or injury the De Soto sustained by the collision, except a small piece of caulking on her larboard bow, and stood on the hurricane deck of the Buckeye for that purpose the next morning. Deponent saw some black scratches on the larboard bow of the De Soto. Witness does not know there were any apprehensions of the Buckeye sinking, previous to the collision, on account of her being old. There were eleven horses on the forecastle of the Buckeye. Previous to going on the hurricane deck, and after leaving the mouth of Old river, deponent was on the forecastle and down below, and could not tell how she was running until reaching the hurricane deck. R. Klady was engaged on the Buckeye about the first of October last, and *and* has been on her since as a pilot; had been so engaged on her the year previous.

Chief examination resumed.

Since the purchase of the Buckeye by Capt. Caldwell and Mr. Smith, they have expended a large amount in her repairs, but what amount witness does not know; she was pretty much in a dismantled state when purchased. Deponent knows the tiller rope was of good quality of patent wire, and was on her when deponent first went on her, 24th March, 1843. When witness went up on the hurricane deck, and before seeing the De Soto, he looked to see where the boat was, and how far she had got up the river, and the course she was pursuing, and is certain she was running around the willow bar; it was deponent's duty, as the mate of the boat, and did so. Witness supposes the Buckeye was running at the rate of six or seven miles, dead water there nearly.

Cross examination resumed.

Witness having been shown a map drawn by the engineer, G. T. Dunbar, and, after examining it, is of opinion that, when he first saw the De Soto from the hurricane deck of the Buckeye, she was going in the direction indicated by the line on the map, and the De Soto coming on the other, as indicated by the other line; and the collision took place about where the two lines intersect each other. Witness has an imperfect knowledge of drawing, and merely guesses at it; and cannot say by the map, from his knowledge of maps, the distance up. The Buckeye had been at Routh's landing, on the Mississippi river, the upper mouth of Old river, and thence went into the lower mouth of Old river, and entered it at the lower point of the island. Witness has no knowledge of any enmity existing between different boats meeting each other; he has heard it said, the boat going down ought to stop her engine. Witness observed the De Soto's engine was *stoped* before the collision; but cannot say whether her engine backed or not.

Signed, JOSEPH INGLE.

Sworn to, and subscribed before me, this 10th day of March, 1844.

Signed, J. BALDWIN, *Recorder*.

Testimony taken before the mayor, and filed in this cause, as evidence for libellants, on the 17th April, 1844.

Affidavit of George H. Caldwell.

Personally appeared before me, William Freret, mayor of the city of New Orleans, George H. Caldwell, who, being sworn on the Holy Evangelist, made oath, that M. J. Morgan is a material witness for the libellant in the case of George H. Caldwell, master, &c., of the steamer Buckeye, &c., vs. the steamer De Soto, her tackle, apparel, &c., and P. F. Kimball, owners, and Reed, late master of said steamer De Soto, in the district court of the United States for the eastern district of Louisiana, sitting as an admiralty court; that said Morgan is about to leave immediately the jurisdiction of said court, to be absent out of it for more than six weeks, as this affiant verily believes; that he also believes that said Morgan will go out of the State of Louisiana, and even out of the United States; and this affiant verily believes, that unless the deposition of said Morgan be taken, "de bene esse," his testimony cannot be had at the trial of the aforesaid cause.

Signed, GEORGE H. CALDWELL.

Sworn to, and subscribed before me, this 6th day of March, 1844.

Signed, WILLIAM FRERET, *Mayor*.

United States district court,
Eastern district of Louisiana:

THE CAPTAIN and Owners of the steamer Buckeye,
vs.
THE CAPTAIN and Owners of the steamer De Soto.

The deposition of Michael J. Morgan, taken before the undersigned, mayor of the city of New Orleans, the answers to which to be read as evidence in the trial of the above cause.

The said M. J. Morgan, being first duly sworn on the Holy Evangelist to tell the truth, the whole truth, and nothing but the truth, deposeth and saith: That he is a steamboat captain, and that he has been acquainted with the navigation of Old river for the last fifteen years; and he has been seven years, and is still, a resident, at the head of the Atchafalaya bayou, about three miles from Red river proper; he also states that there is a rise and fall of the tide at the place where he resides; he says that he noticed it particularly; in June or July, 1840, there arose a controversy about the rise and fall of the tide; he did not believe it previous to that time; he took particular notice for about three weeks, and observed a difference of about one inch and a half every day, which is the highest rise that he ever noticed. The rise and fall was regular every day when there was no wind; his attention was drawn to it, and he feels perfectly satisfied that the rise and fall did exist at that time; he also states that he had a mark, and examined it daily. On

being asked if he knew Mr. David McGuire, the pilot of the steamer De Soto, he answered that he has known him ever since 1834 or 1835, and has often travelled on boats where he, McGuire, was pilot, and considered him a very good pilot; travelled with him, the last time, about the year 1838 or 1839. On being asked what is the general character of McGuire at present as a pilot, he states that he has heard some of the persons employed on other boats say that McGuire's sight has not been very good at night for the last two or three years; he states that he has heard this from pilots and river men; he has heard this spoken of several times; he further states, that he does not know it from personal knowledge. On being asked what course is usually taken in ascending the river on entering the lower mouth of Old river, he states that he keeps to the left hand side, the bar being on the left in going up; he states that there are three or four large cypress logs on the bar, one end sunk and the other end floating; these logs are principally towards the head of the bar; he states that he intended to leave the city this evening, at about four o'clock, for Fort Towson, in Arkansas; he expects to start this evening; the steamboat was getting up steam when he left her, about two o'clock. That portion of the statement which mentions that McGuire's sight was not good at night was objected to, because it was a hearsay statement; it was objected to by the counsel of defendants, who, reserving exceptions to the mode of taking the testimony, no interrogatories being previously filed or commission issued, and the defendants being notified only one hour previous of the time and place of taking depositions, proceeded to cross-examine the witness. On being asked if he intends to return to the city, he states that he expects to be in the city in about one month; he is running a boat in this trade, and Louisiana is his home; he says that he is sometimes detained longer; was once detained five months; he left here last June and returned in November, and the last trip he made he left on the 3d of December and returned on the 23d of February. Being asked if he were ascending the river with a boat deeply laden, should meet a boat descending the river loaded with cotton, what he would do; answers, that he would keep as near to the shore, on the point side, as he could; was asked if he would attempt to cross the river before the boat descending had passed him, he says that it would be out of his course to do so.

Examined in chief.

And being asked if he were descending the river in a boat heavily laden with cotton, and meeting another boat, what course he would take; answers, that he would keep in the bend.

Signed, M. J. MORGAN.

I, William Freret, mayor of the city of New Orleans, do certify, that I have caused Michael J. Morgan to appear before me this sixth day of March, 1844; and having been duly sworn by me to testify the truth, the whole truth, and nothing but the truth, and that the foregoing depositions were by him subscribed at the time and place above written.

Given under my hand and seal this 6th day of March, 1844.

Signed, WM. FRERET, *Mayor*.

Mayoralty of New Orleans, 8th March, 1844.

I, William Freret, mayor, do hereby certify, that I took the deposition of Michael J. Morgan, prefixed, for the reason that the witness was about to depart immediately out of the jurisdiction of the honorable the district court of the United States for the eastern district of Louisiana, and out of the State of Louisiana, as he himself stated, and as George H. Caldwell, libellant, swore that he believed the witness would, before any subpœna issued. That the witness stated he would be absent at least one month, and might be absent longer. That libellant stated, on oath, that he feared that the witness would be absent at the trial of this case aforesaid, and that the testimony of this witness would be material to libellant at the trial thereof. That I was requested, on the 6th day of March, by George H. Caldwell aforesaid, to call the said witness, for the reasons set out in his affidavit hereto annexed, and to give notice to the respondents, P. F. Kimball, and —— Reed, master of the De Soto; that I did give notice to said respondents, Kimball and Reed, who appeared, by their counsel, the same day, at the hour appointed, viz, at two o'clock, March 6th, 1844. That I took the deposition of said witness in answer to the questions propounded by either party, after he had been duly sworn.

In testimony whereof I hereunto affix my hand and seal, before the papers have ever gone out of my possession, to this certificate, the day and date first above written.

Signed, WM. FRERET, *Mayor*.

Testimony for respondents.

Evidence taken, by consent, before the clerk of this court, and filed June 7th, 1844, as testimony for respondents.

United States district court, eastern district of Louisiana, Friday, March 15, 1844.

GEORGE H. CALDWELL and als.,
vs.
THE STEAMER DE SOTO and Owners.

Testimony taken, by consent, before the clerk of the said court, in the above entitled case, this day.

Nathan Darling, witness for the respondents, being sworn, deposes: That he is a sutler in the army, now stationed at Fort Jesup; that he was a passenger on the De Soto, which arrived at the port of New Orleans yesterday, on her last trip from Natchitoches. On her trip down, the De Soto stopped at the place where it was supposed the Buckeye was sunk, in collision with the De Soto, upon a previous trip; Captain Kimball, of the De Soto, ordered the yawl of that boat, with the mate, one pilot, and two men, to row the boat to find where the Buckeye was sunk; to which place their attention was immediately directed, by some pieces of wood sticking out, and there they proceeded in the yawl, and sounded at that place, where they found the hull to be, by dropping the lead on the boilers; this took place on Wednesday, the 13th March;

witness judged it to be the boilers, from the fact that the lead was battered, and the sound of the lead against the boilers was distinctly heard by the passengers on the De Soto. Witness saw the depth of water measured, which was 38 feet on the boilers, and about 48 or 50 feet at the bow and stern of the Buckeye. The wreck of the Buckeye lay very nearly about the middle of the river, about one hundred yards, in the witness's opinion, nearer the bar shore than the other; other persons thought she was as near the middle of the river as she could be. Witness states that it is about 600 yards from the willows on the bar to the wreck of the Buckeye. The De Soto was steered directly from the wreck across to the willows, and the bows of the boat were run entirely into the willows; from her bow a line was then thrown, and was found a depth of twelve feet water. The De Soto was then run up to the head of the bar, so as to take the admeasurement of the whole of the bar, from the head to the foot; and witness states that upon no part of the bar, where the depth of the water was measured, was there discovered to be less than fifteen feet water; the soundings were made within fifteen feet of the willows, all the way down. Witness states that soundings were taken all across the river, and there was no place where a boat drawing 12 feet water could not have run. Witness assisted in measuring the line used in the soundings, and is certain that the admeasurement before mentioned is correct.

Cross-examined.

States that the pieces of wood before spoken of, as the wreck of the Buckeye, were something like the railing of the boat, he could not tell exactly. These pieces were evidently attached to the hull of the wreck, and witness states that there were two or three stumps within about a mile of the wreck, and the nearest stump was above the wreck, a good deal nearer than a mile, and the other was below. What witness means by stumps is, that they appeared to be the ends of logs sticking in the river; could not say whether they grew there or not.

Examined in chief resumed.

States that it is about two miles from the wreck to the outer end of the island, next to the Mississippi.

Signed, N. DARLING.

John A. Irvine, witness for respondents, being sworn, states, that he resides at Natchitoches, and that he was a passenger on the De Soto on her last trip down, when soundings were made to find the wreck of the Buckeye, on Wednesday morning, the 13th instant. Witness supposed it to be the Buckeye, from what was said by the persons in the yawl. The lead was then thrown from the yawl, at a place about the middle of the river, where there were some timbers sticking up, said to be the stancheons of the wheel-house; the soundings were taken on what they said was the wreck, and on each side of it. Witness did not hear the lead strike on the wreck; there being some defect in his hearing, might have been the cause. The depth of water over the wreck

was over five fathoms, as near as witness can recollect; on the sides of the wreck, and behind it, was over six fathoms. Witness states that the wreck was as near the middle of the river as it well could be. The De Soto ran across from the wreck to the willows, where soundings were taken, and more than twelve feet water was found there. Soundings were taken then along the whole length of the bar, and the depth, as witness heard, was a quarter twain. The soundings were made along the willows, ten or fifteen yards off. Witness states that he is a merchant by profession.

Cross-examined.

States, that he had no other means of ascertaining that the wreck of the Buckeye was where the soundings above alluded were taken, except that he *he* was so informed by the pilot of the De Soto, or some other person on board that boat, and some pieces of timber, which he believed to be part of a steamboat. Witness states, that he saw two snags, he believes; he is certain as to one.

Examination in chief resumed.

States, that he was not very particular as where the admeasurement of the water was taken, as above alluded to; saw Captain Darling writing at the time the soundings were taken, and supposes that he was making a memoranda of them.

Signed, JOHN A. IRVINE.

Thomas P. Jones, witness for the respondents, being sworn, states, that he resides at Natchitoches, and that he is the dep. clerk of the district court, and was a passenger in the De Soto upon her last trip, and on her on the 13th instant, when soundings were taken to find the wreck of the Buckeye in Old river, where, it was said, the Buckeye was sunk. Witness saw the lead thrown out, the admeasurement taken, and having heard the testimony given by Mr. Darling, corroborates the same in every material particular. Witness assisted, with Mr. Darling, in measuring the line, and was present at all the different soundings made, as stated by him. Witness states, that, from his own observations, he judged that the supposed wreck of the Buckeye was as near the middle of the river as it could be; the De Soto ran directly over the wreck in crossing from the willow bar to the island shore.

Signed, THOMAS P. JONES.

Cross-examination waived.

Gervais Baillio, witness for respondents, being sworn, states, that he is the parish judge of the parish of Avoyelles, and that he resides in that parish. States that he was a passenger on the De Soto on her last trip down, and on Wednesday morning, the 13th instant, between daylight and breakfast, he arrived at that point on Old river, where it was represented the Buckeye had sunk; and they stopped at a place as near the middle of the river as possible, where there were some scantlings stick-

ing out of the water, with a piece of plank painted attached thereto. There the yawl was sent out, where soundings were taken by the persons in the yawl. The De Soto, in the mean time, crossed to the left hand side shore. The witness means by this, the willow shore; does not believe that there are willows but on one side; before reaching the willows, about the width of a boat from it, the depth of the water was measured, and fully fifteen feet water was found. The head of the boat was then run fully into the willows, and the depth of the water was found to be twelve feet. The yawl lay at the point where the scantlings were found. The De Soto then *then* ran around and about the yawl, to enable the passengers to discover where the wreck was exactly. The passengers differed somewhat in opinion; some believing it was in the middle of the river, others nearer to one side; but witness himself thought it was as near the middle as possible. Witness saw the soundings made for the wreck of the Buckeye at the point where the scantlings lay; and from the line which was sunk there, they found five fathom and a quarter at one place; the line was dropped there seven or eight times, that the passengers might take notice. It was then dropped near the bow of the wreck, as supposed, where 6½ fathom water was found; then near the stern, as supposed, and no bottom could be reached with that line. The scantlings spoken of were three miles from the Mississippi river. Witness, as well as the other passengers on the De Soto were satisfied that it was the wreck of a boat, and believed it to be the Buckeye, from the report as to the place where the collision occurred, and the appearances about the shore. Witness states, that soundings were taken all along the bar, the De Soto running within a boat's width of the willows, and the average depth on the bar was three fathoms and a quarter, seldom less.

Cross-examined.

States, that they passed some snags, or stumps, before they reached the place where the wreck of the Buckeye was supposed to be. States, that when they reached this point, the yawl was sent out, and the De Soto proceeded to the willows. Witness did not hear the soundings himself; and did not look at the lead after the soundings were taken; and does not know whether it was battered or struck against any thing hard. Witness thinks that the stumps spoken of were snags.

Signed, GERVAIS BAILLIO.

The above named witnesses were duly sworn, and subscribed their names to their several depositions before me.

Signed, N. R. JENNINGS, *Clerk*.

March 22d, 1844.

John L. Gray, witness for respondents, being duly sworn, deposes: That he resides on Black river in the parish of Concordia, and that he was a passenger on the De Soto, on her trip to New Orleans, at the time she came in collision with the steamer Buckeye, and when the latter was sunk. The collision occurred, witness thinks, about the 1st

of March, 1844, at the hour of four o'clock in the morning, an hour or so before daylight; witness got up from his birth and dressed himself at about 3 o'clock, when the De Soto was wooding, some miles above the place of collision; witness states that the boats came together about two miles and a half from the Atchafalaya river, in a *straight stretch*; witness was standing on the hurricane deck of the De Soto when he saw a boat ascending the river, on the left hand side of the De Soto, which boat then was, as near as witness could judge, about the middle of the river; supposes the ascending boat when he first saw her about some two or three hundred yards from the De Soto; at the moment of witness first observing the ascending boat she made a *tack* across the river as witness thought; and from her course, as witness thought, she would strike the De Soto about her centre; the Buckeye appeared to be running crooked, and the boats came together a little to the left of the bow of the De Soto; after witness first observing the boat ascending, the De Soto kept her natural course down the middle of the river, as near as witness could judge; and when the ascending boat got within two or three lengths of the De Soto, the De Soto rung her bell, and commenced backing, and witness thinks she rung a second bell; witness means by the bells, her alarm bell; the engine bell was rung a short time after the first alarm bell; witness did not hear any bell rung on the boat ascending, and did not observe that she stopped at all, before the collision; the headway of the De Soto was stopped before the boats struck; the ascending boat witness discovered to be the Buckeye, which sunk directly after the collision; the effect of the collision was to turn the De Soto half way around to her right, leaving the Buckeye on her left, where she sunk almost immediately, and leaving the bow of the De Soto somewhat up stream; witness thinks that from the course which the Buckeye was running, she would have struck the De Soto about the centre, if the De Soto had not been stopped when she was; when witness first saw the Buckeye, if she had kept her course up the river, the collision would not have occurred; there being nothing of which witness was aware to prevent her doing so; witness, when on the hurricane deck, was standing by the side of the mate when he first saw the Buckeye; he afterwards went down on the boiler deck, and was there when the collision took place; witness observed the conduct of the pilot and mate of the De Soto, and thinks they did everything in their power to avoid the collision; witness heard no conversation between the pilot and mate; witness states that after the De Soto was swung around to the right, she made two or three revolutions of her wheel to get up to the Buckeye to be fastened to her; witness states that the officers and crew of the De Soto, after the collision, made every exertion to save the lives of those on the Buckeye; the yawl was sent out, and a ladder run from the De Soto to the Buckeye, and also one or two planks shoved out.

Cross-examined.

States that he resides in the parish of Concordia, and is by profession a planter; witness does not know on which side of the river the De Soto wooded, as stated above; witness states that he went on the hurricane

deck, as before stated, for company, because the captain and mate were there, and he remained there an hour before the collision occurred; witness went on the hurricane deck at the time the De Soto was at the wood yard; after witness had been on the said deck some time, he believes the captain came down, altho' he cannot say at what time; when witness first saw the Buckeye she appeared to be on the left of the De Soto, and coming directly to the centre of the De Soto according to her then position; witness states that he wrote a small certificate concerning the affair of the collision, at the request of the officers of the De Soto, he can't say whether at the request of the captain or the clerk, or who, which appears in the Tropic of the 6th March, and it being shewn to the witness, he recognises it to be the same; witness was asked afterwards to insert in his statement "being on the hurricane deck," which he declined to do, because he did not think it was worth while, and because he did not think it would be published. Witness being asked at what place the Buckeye would have struck the shore had she continued her course, answers, he cannot tell; cannot state how many revolutions there were of the wheel of the De Soto before the collision, and that the De Soto was backing at the time, and that she was making no headway; witness states that the bow of the Buckeye struck the De Soto a little to the left of her bow, and when the bow of the De Soto was swung around, it pointed a little up stream, almost across the river, but quartering up stream; the De Soto's bow in the morning, when day dawned, was pointing across stream; witness states that the De Soto was in a straight stretch of the river when he discovered the Buckeye, and the collision occurred about the centre of that stretch, as near as witness can recollect; that the stretch appeared to be straight, about a mile and a half, both ways, up and down the river. When witness stated that the De Soto swung around to the right, he means to her right as the right of a descending boat; the stern of the De Soto swung around to the right. Witness being asked how long the De Soto was wooding, after he got up, states, that it was about ten minutes.

Examination in chief resumed.

Witness states, that he wishes to correct the statement made above, as to the stern of the De Soto swinging around to the right; that the bow of the De Soto swung to the right, and the stern to the left. When witness made his statement, as published in the Tropic, beforementioned, he had made a mistake as to the deck, in omitting to state that he had also been on the hurricane deck, which he did not deem material to alter, as he did not expect it to be published.

Signed, JOHN S. GRAY.

Isaac Sterne, witness for respondents, being duly sworn, deposes and says: That he was a deck hand on board the steamer De Soto, at the time of the collision with the Buckeye. At the time he was roused up, he heard the bell of the De Soto, backing; he was sitting at the time on a cotton bale, at the forward part of the engine room; he heard the bell ringing, and ran forward, and the De Soto had stopped; the De Soto

was backing before he got forward; the Buckeye had struck her before he had got on top of the cotton; before witness got forward, the hands being tired, some of the passengers of the De Soto were forward; Capt. Reed came out in his drawers, and caught hold of a plank, and finding he could not lift it, he directed some of the hands standing by to assist him, and shove it on board the Buckeye; the mate directed some of the hands to go aft, in the yawl; the captain called some of them back; the mate went into the yawl, and two or three hands with him; witness jumped on the forecastle of the De Soto, and then got on board the Buckeye; a line was passed to him by some one, and he tied it to the bell post; he saw a man, whom he believes to be Captain Caldwell, coming off the Buckeye on to the De Soto; presently, Capt. Caldwell, together with witness, and some other persons, assisted in getting a very fat old lady out of the after cabin of the Buckeye, and took her on board the De Soto; all the hands of the De Soto assisted in getting the passengers and trunks out of the Buckeye.

While witness was aft in the cabin of the Buckeye, diving down getting trunks out, he got a little child in a chair floating in the water, and picked it up and handed it to Captain Caldwell, who said God bless it's little soul, whose child is it?—I believe it is Major King's; and passed his hand over its mouth, to see if it was dead or had breath. (Here the counsel for the libellants objected to all the evidence of the conduct of Captain Caldwell after the collision, and to the conversation he had with witness as *irrevelent*.) [He was picking up trunks on the Buckeye, which he got paid for; witness means that he was paid for some trunks only, if he had received pay for all he picked up he would have made a fortune.]

The above lines have been stricken out, because they were replies to questions not propounded by the counsel for the respondents, his attention at the time being otherwise engaged. The lines above, that have been stricken out, were the replies of the witness to the question of the clerk taking testimony, asking him what next.

The counsel for the libellant insist upon retaining the evidence above stricken out.

The counsel for respondents now requires the witness to continue his narrative from the point where it was stopped by the counsel for the libellants, requiring the clerk to note their objection.

Here the counsel for the libellant required the clerk to put down the remark of witness when he came to the end of lines above stricken out, which was, "that is all."

Witness ascended the ladder from the cabin of the Buckeye, and handed the child to Captain Caldwell, who said, God bless it, &c., after which Captain Caldwell handed witness back the child, and he took it on board the De Soto; witness then returned back to the cabin of the Buckeye, and commenced feeling about the cabin for dead bodies; a merchant named Mr. Houston came to him, and told him that Mr. Hinds had lost his little daughter, and he wished that witness would dive down and endeavor to find her; he did so, and a rope was tied

round him to prevent his getting under the chairs and tables; he felt around and felt something that he thought was a dead body, but it was not, but was a pillow or mattress. Witness then untied the rope around him, and stopped a minute or two to rest, and saw Austin Henning, pilot of the Buckeye, who said, Ike, come up here and help Capt. Caldwell to get his bureau out; witness replied, hold on, I will directly; Captain Caldwell said, damn it to hell, come up here and help me to get my bureau up.

Signed, ISAAC STERNE.

April 3*d*, 1844.

Peter Delmore, witness for respondents, being duly sworn, deposeth and says: That he has been twenty-four years engaged in steamboating, and running between the port of New Orleans and Natchitoches, and is well acquainted with the route between said ports; he was well acquainted with the steamer Buckeye. About an hour or two before the Buckeye left New Orleans, on her last trip up, he had occasion particularly to notice the boat, from the fact that a friend of witness, Mr. Hyams, was about to go up on her, and noticed that she was very heavily loaded, and witness asked Mr. Hyams why he did not take some other boat; that if the Buckeye struck nothing in her passage up, she might go safe, but being an old boat, and very heavily laden, if she struck anything she would very probably sink. He has known the Buckeye for some time, and would suppose her to be seven years old. Witness knows that he is right about the age of the boat, and does not think her age would vary six months either way. Witness does not think that the Buckeye was two heavily ladened, if she had been a good strong boat; they generally load deeper if they can get freight. Witness thought there was danger in consequence of her age. The Buckeye originally was built strong; but she looked decayed, and witness knew she was not strong, from the fact of her not looking straight, and her timbers apparently giving under her load. Witness knows the De Soto, and if, at the time of the collision, the De Soto had been coming with a full headway, she would have sunk the Buckeye in a second's time.

Cross-examined.

Witness and Capt. Kimball, the owner of the De Soto, are interested in running the steamer Cote Joyeuse from this place to Natchitoches; they are part owners of the Cote Joyeuse. It is a regular or general usage for boats descending to keep the bend of the river, and boats ascending to keep the bar side; it is the only way that boats can avoid coming in contact. Witness, in making up his opinion of the Buckeye, did not go on board and examine her, but merely judged of her from her appearance from the shore. Witness saw no appearance of any recent repair of the Buckeye. He does not recollect to have noticed any. Witness did not and does not know that she had been recently repaired. All vessels will give more or less when loaded, and any vessel will give when the freight is improperly stowed; from the way which

the Buckeye gave under her freight, witness is strongly of opinion that she was not sound.

Signed, PETER DALMORE.

John M. Phillips, witness for respondents, being duly sworn, deposeth and says: Witness is well acquainted with Captain Caldwell and Mr. Smith, the owners of the steamer Buckeye; is also pretty well acquainted with Mr. Klady, the pilot of the Buckeye; has known him several years. Witness was on board the same boat with Mr. Klady about two years ago for a short time. Witness owned one-half, and had charge of the steamboat Hannibal at that time, and employed Capt. Caldwell to take command of her; at that time Mr. Klady was employed, either by witness or Capt. Caldwell, as pilot on board of that boat; during most of the time that Klady was on board of the boat, which was only for a few trips, witness remained pretty constantly on board. During the time that Mr. Klady was on board witness' boat, he did not think him a first-rate pilot; that he was not as careful a man as he wanted. Has frequently conversed with Capt. Caldwell about him; Capt. Caldwell thought him as good a pilot as any of them, but witness thought otherwise. Witness has himself, for several years, been following the business of steamboat captain, at intervals. Mr. Klady, as well as witness recollects, left the steamboat Hannibal of his own accord, having obtained a situation as overseer. Mr. Klady was employed as pilot on board the Hannibal at the solicitation of Capt. Caldwell. Since the collision of the Buckeye, Mr. James Smith, one of the owners, conversed with him on the subject. The conversation that witness had with Mr. Smith occurred at his, Mr. Smith's, plantation, after he had landed from the Joe Nichols, and had come up on that boat after the wreck of the Buckeye, bringing with him the first intelligence that witness had received of this disaster; Smith gave an account of it. Witness remarked to him, that there was great blame some where, who is to blame? to which Mr. Smith replied, that if Mr. Klady, the pilot, had done right it would not have happened. That since this suit has been brought, witness, in coming down the river with Mr. Smith, was told by Mr. Smith that he had no idea of bringing this suit; that it had been brought without his knowledge; that he knew that McGuire did not do it intentionally. He also stated, that since he saw the place, and reflected upon it, he did not blame Mr. Klady as much as he did at first. This last conversation was about a week ago. In the first conversation with Mr. Smith, at his plantation, Mr. Smith blamed Mr. Klady as the cause of the collision, and witness heard him blame no one else; and in the same conversation Mr. Smith told him he had been opposed to Mr. Klady throughout as a pilot; and also stated that every little accident had always happened when Mr. Klady was at the wheel. At the time the steamer Norma run into the Hugh L. White, Capt. Caldwell was captain of the Norma, though witness believes that Capt. Caldwell was not at the time on board; Mr. Klady was the pilot, and witness has heard Mr. Klady since say, that at the

time of the collision he was at the wheel. (Counsel for libellants objected to Klady's admission, as hearsay.)

Cross-examined.

Witness does not recollect that Mr. Klady ever told him the particulars of the collision of the Norma; but he presumed that the White was to blame, or there would likely have been a suit about it. Witness thinks that in the last conversation he had with Mr. Smith, that Mr. Smith did state that the De Soto was out of her place at the time of collision, and that he thinks that he did not say so in his first conversation with witness; he did not hear Mr. Smith say any thing about a defect of sight of Captain McGuire in that conversation, or in any conversation. Witness has heard many persons speak of Capt. McGuire's defect of sight, but never heard any one say that they knew his sight to be defective; and witness never heard his sight called in question before this collision. In the first conversation witness had with Mr. Smith, Mr. Smith, in blaming Mr. Klady, thought he ought to have stopped his boat sooner and backed her; witness does not know that Mr. Klady was blamed by Mr. Smith for any thing else; that Mr. Smith, in blaming Mr. Klady, appeared to speak from what he had been told by some of the passengers, more than from what he saw himself, though he, Mr. Smith, was up at the time of the collision himself; that he mentioned that some of the passengers had told him that Mr. Klady was steering wildly, and running the vessel across the river. Witness thinks that Mr. Smith said that the passenger who had told him so was Mr. Glascock; witness is acquainted with Mr. Glasscock, and being asked what is his reputation for veracity, replied, it is doubted; and being further asked if he has not the reputation of being a notorious liar, replied, that people generally say so.

Examination in chief resumed.

Mr. Smith, in his conversation with witness, seemed to have a very confused knowledge of the position of the boats and the manner of the collision; but he represented that, at the moment of the collision, both boats were heading to the bar shore, and that the starboard bow of the Buckeye came in contact with the larboard bow of the De Soto, and that after the collision the sterns of both boats swung round together. Mr. Smith told witness that he just jumped out of bed when he heard the bells ring.

Re-cross-examination.

In the second conversation with Smith, witness did not understand Smith to blame any one for the collision, but seem to look upon it as an accident that could not be avoided.

Examination in chief resumed.

Witness states that Mr. Glasscock is considered by witness to be an honest and punctual man, and witness would believe his statement under oath, although in his common conversation he is not generally be-

lieved, and he deals a good deal in marvellous narrations. Witness being asked whether, from his general reputation for veracity, he would be entitled to credit as a witness in a court of justice, answers, that he has never heard his veracity questioned in that respect, and witness has never heard any one say that they would not believe him under oath; witness also never heard any one say they would believe him; witness never heard any one say any thing about him on this subject.

Signed, JOHN M. PHILIPS.

April 6th, 1844.

Benjamin F. Glasscock, witness for respondents, was first sworn upon his voir dire by the counsel for the libellants.

States that he lost some few articles of freight on the Buckeye, at the time of the collision, amounting in value to 70 or 80, or perhaps one hundred, dollars; lost nothing except his freight; that he has not entered in this suit in any manner or form; states, that if the freight was lost through the negligence of the pilot of the Buckeye, which he believes it was, that the pilot should be responsible; being asked if he did not think that the boat should be responsible, answers, he does not know; being asked if he did not think that the boat ought to furnish careful officers, answers, that it ought; being asked if the loss was incurred by the negligence of the officers, whether the boat should not be responsible, answers, that perhaps it ought to be, although he does not know much about law; being asked if he was on friendly relations with Captain Caldwell, answers, that he was, and had never had any hard feelings towards him, save that he thought it unkind that Capt. Caldwell did not stop for him, according to promise, to bring him to the convention, although he explained it afterwards by stating that he was full of passengers; states, further, that he always patronized Capt. Caldwell, although he believed his boat to be an old and rotten one; being asked if he had ever used any expressions of hostility towards Captain Caldwell, answers that he never did, except that he thought that he had used him ungentlemanly in not stopping for him, as before mentioned; if he has ever used any harsh expressions concerning him, which witness has now forgotten, it was on that account; the not stopping for him, as above stated, occurred before the collision.

The witness, being in behalf of the respondents, now sworn in chief, deposes:

Being called upon to state all he knew respecting the collision between the Buckeye and the De Soto, states, that he was a passenger on board the Buckeye at the time of the collision, and was up and dressed some 35 or 40 minutes before the collision occurred; he was passing from one part of the boat to the other until the moment of the collision; a few minutes after he got up, he was on the forward part of the chimneys, near the bow, and he saw that the Buckeye was running zigzag, holding no particular course; some four or five minutes before the collision, witness was walking upon that side of the boat nearest the island, and thought that the Buckeye was then about 150 yards distant

from the island shore, and the witness thought to himself that, if the pilot did run her on a snag, he, witness, could save himself, as he saw that he was steering her very wildly and very badly; witness passed into the cabin, where there were several gentlemen gambling at a card table, and *was* speaking to Mr. Garrett, and quizzing him something about the game, who was gambling at the time, and witness remained at the card table some 3 or 4 minutes, or perhaps longer; witness left that card table to go to another in the social hall; he got about opposite the door which leads out on the guard, when he heard the big bell of the De Soto ring; he ran out in that direction, which was on the island side, and saw the De Soto some twenty-five or 30 yards, perhaps more or less, from the Buckeye, and he judged her to be backing, from what he could see; witness then ran into the social hall, where Captain Caldwell was either standing or sitting, witness could not tell which, and said to Captain Caldwell that a boat was running into us; witness passed through the front doors, and went forward of the chimneys, on the boiler deck, and heard the bell of the Buckeye to ring, which he thinks was the bell to back her; the engineer backed her very quick, and he counted three escapements of steam before the concussion.

Witness was standing on the boiler-deck, forward of the chimneys, when the boats came together, and thinks that the Buckeye was struck some four or five feet, not over six feet, back of the bow; the De Soto stove away her whole bow; it was like running a stick into the sand; witness could compare it to nothing else; the concussion was not a very violent one. Witness then ran back into the clerk's office, and said to Mr. Smith, who was doing something to the iron chest, that he had better be getting out, as the boat was sinking very fast. Witness gathered up his carpet-bag, walking-stick, and hat, and then ran out on the island side of the boat, at which side she was struck, forward of the wheel-house; the two boats were lying side by side, their sterns having come pretty near together. Witness threw his carpet-bag, stick, and hat, on the cotton of the De Soto, and prepared to haul off his coat, and found that the Buckeye was sinking so fast, that he crawled upon the De Soto, forward of the wheel-house; the wheel-houses of the two boats being near together; that of the De Soto being a little aft of the Buckeye. Witness was preparing to pull off his coat, as above stated, for the purpose of returning to try and save the children, &c., but found that the boat was sinking so rapidly that he had time only to save himself. Witness states, that on the night referred to, when the persons were gambling at the card-table, he saw Mr. Klady, the pilot of the boat, whom the witness now recognises as being present, sitting at the card-table, in the social hall, between 9 and 10 o'clock, P. M., with cards in his hand; witness could not tell whether he was playing or not; he might have been looking at the cards, or he might not; he can't tell; should judge he was playing cards, although he did not see him throw a card; there was money on the table, dimes or small sums. Witness looked on but for a very short time. Witness saw liquor carried to the table, as he was in the act of passing, but he did not see Mr. Klady

drink. Witness did not see the De Soto until he heard her bell ring; he had seen no descending boat, and had no apprehension of any collision at the time he was quizzing Mr. Garret about losing his money. Witness states, that the day before the collision, after passing Bayou Sara, he observed that Mr. Klady, the pilot, steered her very steadily; that he has been in the habit of observing very closely, having been on boats for the last 20 or 25 years, and the only way in which witness can account for the said pilot steering so badly afterwards, is, that he must have been either drunk or asleep. Witness states, that between 9 and 10 o'clock he went to bed; occupied Mr. Smith's berth, in the clerk's office; about 3 or 4 o'clock witness got up, being awoke by Mr. Smith's talking; after getting up, he told Mr. Smith to turn in, as he, witness, did not intend going to bed again; Mr. Smith thanked him, and turned in, and witness supposes that he was asleep at the time of the collision. Mr. Smith told witness, when the next morning they were on the Joe Nichols together, that he, Mr. Smith, had saved the books of the Buckeye, and had sent them to New Orleans on the De Soto.

Cross-examined.

States that he had been up some 30 or 60 minutes before the collision took place, and after going into the social hall, he had walked to the left-hand side of the boat, and then walked round in front on the boiler-deck; the boat was, at that time, on the bar side, about one hundred yards from the willows, heading for the island; she was pretty close over on the bar side. Witness then walked in, and left her running in that direction; in two or three minutes, witness passed over to that side of the boat next to the island; she was then heading for the bar, about 150 yards from the island, and continued her course towards the bar until he went in. Witness then remained in the cabin until he heard the De Soto's bell ring, when he stept out on the right-hand side of the Buckeye; he saw the De Soto immediately on stepping out; the door that witness stept out of was the side door of the social hall, and on stepping out he saw the De Soto running nearly square in towards the Buckeye, or that she was running in that direction that she was bound to strike the Buckeye. Witness, when he went out, does not know in what direction she was bearing towards the Buckeye, when he first saw her, but was satisfied that it was in such a direction that she must strike the Buckeye somewhere about the bow. Witness was walking near the door of the social hall, when the alarm-bell of the De Soto rung, and he immediately stept out on the guard, where he remained but a few minutes; the De Soto, he judged, was backing at the time he stept out; he could see the water boiling before her wheel, and he was very much frightened. (The counsel for the respondents here objected to this statement of the witness as being frightened, to be put down; and he cautioned the witness to be more particular in the use of his words, as the term being frightened, was meant by witness in an ironical sense; and the counsel for the libellants insisted upon its being put down in a literal sense.)

Examination of the witness Glascock resumed this day, April 8th, 1844.

Cross-examination continued.

States that he did not hear the alarm-bell of the Buckeye ring previous to the collision; and on hearing an alarm-bell ring, he was on the right-hand side of the Buckeye, and he ran out in that direction, and saw a steamboat coming diagonally in, or straight in, witness can't say which, and after they swung together, he saw her name, which was the De Soto. The De Soto was loaded with cotton, piled up some eight or ten feet in the ordinary way, back of the bow, and forward of the furnaces. States that from the manner in which the boats struck, witness thinks that they swung around of themselves, their sterns near together; the two boats were jam up together at the wheel-house, when witness went out, which was a few seconds after the collission; when witness got up, he asked Mr. Smith if they had taken in any passengers at Routh's landing, having heard Captain Caldwell say that he intended to stop there, expecting to take in some sixty or seventy passengers; to which witness remarked that if he did, he would sink the boat, the guards being then down in the water. Mr. Smith answered the witness's question by stating that he took in some three or four passengers. Witness had heard previously a passenger say that they had passed Routh's landing. Witness has known Mr. Klady for a year or eighteen months; that he has never known him to drink anything in the way of liquor but once; that he has never seen him drunk; and that he bears the character of a sober, industrious young man.

Examination in chief resumed.

Question by the counsel for the respondents. In your cross-examination of Saturday, the counsel for the libellants insisted upon the having reduced to writing expressions you used "that you were very much frightened," was that a reply to any question that had been propounded to you? To this witness replies, no. The question was not asked him, whether he was frightened or not. The witness being then asked how he came to use those expressions, and what he meant by them, answered, that some time before, understanding that one of the counsel, believing it General Houston, had asked the question, whether he, witness, was not a notorious liar, and being excited, when General Houston, during his examination on Saturday, remarked that he must have observed the direction of the boats since he had calculated the escapements of the steam so exactly, and observed the water boiling, said that he wished somebody else was there, who could describe it better than himself, as he was very much frightened, not meaning thereby that he, in reality, was very much frightened; the words were uttered from excitement and irritation, he, witness, being at the time nearly as much himself as he is at present; being excited by this remark of Genl. Houston, and being himself an excitable man, as all his friends know. Witness remained but a moment out, when he saw the De Soto, and discovered the sky-lights from her cabin; he saw the water boiling up,

and the lights, and concluded that they must come together, but did not remain long enough to ascertain the position of the boats accurately.

Signed, B. F. GLASSCOCK.

April 8th, 1844.

Edward Sparrow, witness for the respondents, being duly sworn, states, that he has resided permanently in the parish of Concordia since 1830, and that he recognises Mr. Glasscock as the individual who has already testified in this case, and that he has known him since the year 1831; and that he has resided, and now continues to reside, in the same parish with witness; that he has known him well since the year 1834 up to the present time, and knows very well his reputation among those with whom he lives, and has never known his character for veracity questioned; that he is regarded as a sober, industrious, and energetic man; that upon one occasion only has witness ever heard or known of his reputation for honesty being attacked, and that was by a Mr. Austin, which was a personal quarrel, and ended in the death of the said Austin. Austin mentioned no particular fact in his accusation, but said that Glasscock was a d—d rascal. Witness states that as much reliance could be placed upon the statements made by Glasscock as by any other citizen in the parish occupying his position, and that he would believe him under oath as much as he would any other man. Witness being asked what was the character of Glascock for coolness and firmness in danger, answers, that he considers him a cool and determined man; that, in support of this opinion, witness, when he heard of the collision between the two steamboats, Buckeye and De Soto, and understood that Glasscock was drowned, remarked that he did not believe it, as from his knowledge of Glasscock's character, he thought he would save himself if it were possible to be done, or if any other man could under the circumstances. States that Glasscock is a man who is in the habit of playing off his jokes; that if he, witness, met him, and asked him a question, he would give a jocular answer, or such a one as witness would not know whether to believe or not. When the question would be asked him seriously, then he would give a serious answer, and such a one that witness would at once credit. Witness has never known anything malignant about Glasscock; that these jokes he would generally play off on his best friends, subjecting them, occasionally, to some inconvenience.

(To the above testimony, the counsel for the libellants here reserved all objections and exceptions thereto.)

Cross-examined.

States, that from his experience and observation as a practising lawyer, that, in cases of excitement, he has known men of good character entertain views wholly different from each other with regard to the facts; and in criminal matters, cases of assault and battery, he has taken notice that men of equally good judgment and character have different opinions about the facts as they occurred. States that Mr. Glasscock is an excitable man, in one sense of the word; that is to

say, he is a man of strong passions, and that if he, Glasscock, were to make a statement contradictory in itself and improbable, and opposed by other weighty testimony, there is nothing in his character which would entitle his statement to more weight than that of other men whom he considered as deserving of credit as Mr. Glasscock; that if he were to make a statement contradictory or improbable, that he would attribute it to any other cause than to a want of disposition to speak the truth.

Examination in chief resumed.

States that, if Glascock should give a deliberate statement about the collision of the Buckeye and the De Soto, that he would believe it: first, because he is a man of truth; and secondly, because he was likely to be as cool under such circumstances, and to receive as correct impressions, as any man of his acquaintance.

Signed, EDWARD T. SPARROW.

April 12*th*, 1844.

Peter Jarvis, witness for the respondent, being duly sworn, states, that he resides in Ouachita, and has known Robert Klady, lately the pilot of the Buckeye, for some four years. Being asked concerning the reputation of Klady as a pilot, states that he knows nothing of piloting, but that he regards Klady as being a reckless, careless man; so much so, that witness paid very little attention to what he said; that he would walk off frequently without listening to him, not caring much what he did; that he was a boasting kind of man. When asked what he was boasting about, answered, that it was generally about trifling matters.

(The counsel for the libellants here objects to all the above testimony respecting the character of Klady, as being irrelevant and improper.)

Witness states that he was a passenger on the Buckeye at the time of her collision with the De Soto. Witness was on board the Norma at the time she ran into the steamer H. L. White, which occurred some few miles above Donaldsonville, on the Mississippi river. The collision took place at night; the night was a middling dark one, still they could see. The H. L. White was ascending, and the Norma descending the river. Klady was one of the pilots on board the Norma. Witness did not see him at the wheel at the time of the collision, but he was informed, and it was generally believed by all on board, that he was at the wheel. Witness himself was so satisfied of the fact, that he made no particular inquiry of Klady about it. Witness never understood from Klady that he was at the wheel.

(The counsel for the libellants here reserved his objections to the above testimony as to the collision between the Norma and the H. L. White, as being irrelevant, hearsay, and illegal.)

Witness states that, from his knowledge of the character of Klady for prudence as a pilot, he would not be willing to travel upon any boat on which he was pilot.

and the lights, and concluded that they must come together, but did not remain long enough to ascertain the position of the boats accurately.

Signed, B. F. GLASSCOCK.

April 8th, 1844.

Edward Sparrow, witness for the respondents, being duly sworn, states, that he has resided permanently in the parish of Concordia since 1830, and that he recognises Mr. Glasscock as the individual who has already testified in this case, and that he has known him since the year 1831; and that he has resided, and now continues to reside, in the same parish with witness; that he has known him well since the year 1834 up to the present time, and knows very well his reputation among those with whom he lives, and has never known his character for veracity questioned; that he is regarded as a sober, industrious, and energetic man; that upon one occasion only has witness ever heard or known of his reputation for honesty being attacked, and that was by a Mr. Austin, which was a personal quarrel, and ended in the death of the said Austin. Austin mentioned no particular fact in his accusation, but said that Glasscock was a d—d rascal. Witness states that as much reliance could be placed upon the statements made by Glasscock as by any other citizen in the parish occupying his position, and that he would believe him under oath as much as he would any other man. Witness being asked what was the character of Glascock for coolness and firmness in danger, answers, that he considers him a cool and determined man; that, in support of this opinion, witness, when he heard of the collision between the two steamboats, Buckeye and De Soto, and understood that Glasscock was drowned, remarked that he did not believe it, as from his knowledge of Glasscock's character, he thought he would save himself if it were possible to be done, or if any other man could under the circumstances. States that Glasscock is a man who is in the habit of playing off his jokes; that if he, witness, met him, and asked him a question, he would give a jocular answer, or such a one as witness would not know whether to believe or not. When the question would be asked him seriously, then he would give a serious answer, and such a one that witness would at once credit. Witness has never known anything malignant about Glasscock; that these jokes he would generally play off on his best friends, subjecting them, occasionally, to some inconvenience.

(To the above testimony, the counsel for the libellants here reserved all objections and exceptions thereto.)

Cross-examined.

States, that from his experience and observation as a practising lawyer, that, in cases of excitement, he has known men of good character entertain views wholly different from each other with regard to the facts; and in criminal matters, cases of assault and battery, he has taken notice that men of equally good judgment and character have different opinions about the facts as they occurred. States that Mr. Glasscock is an excitable man, in one sense of the word; that is to

say, he is a man of strong passions, and that if he, Glasscock, were to make a statement contradictory in itself and improbable, and opposed by other weighty testimony, there is nothing in his character which would entitle his statement to more weight than that of other men whom he considered as deserving of credit as Mr. Glasscock; that if he were to make a statement contradictory or improbable, that he would attribute it to any other cause than to a want of disposition to speak the truth.

Examination in chief resumed.

States that, if Glascock should give a deliberate statement about the collision of the Buckeye and the De Soto, that he would believe it: first, because he is a man of truth; and secondly, because he was likely to be as cool under such circumstances, and to receive as correct impressions, as any man of his acquaintance.

Signed, EDWARD T. SPARROW.

April 12*th*, 1844.

Peter Jarvis, witness for the respondent, being duly sworn, states, that he resides in Ouachita, and has known Robert Klady, lately the pilot of the Buckeye, for some four years. Being asked concerning the reputation of Klady as a pilot, states that he knows nothing of piloting, but that he regards Klady as being a reckless, careless man; so much so, that witness paid very little attention to what he said; that he would walk off frequently without listening to him, not caring much what he did; that he was a boasting kind of man. When asked what he was boasting about, answered, that it was generally about trifling matters.

(The counsel for the libellants here objects to all the above testimony respecting the character of Klady, as being irrelevant and improper.)

Witness states that he was a passenger on the Buckeye at the time of her collision with the De Soto. Witness was on board the Norma at the time she ran into the steamer H. L. White, which occurred some few miles above Donaldsonville, on the Mississippi river. The collision took place at night; the night was a middling dark one, still they could see. The H. L. White was ascending, and the Norma descending the river. Klady was one of the pilots on board the Norma. Witness did not see him at the wheel at the time of the collision, but he was informed, and it was generally believed by all on board, that he was at the wheel. Witness himself was so satisfied of the fact, that he made no particular inquiry of Klady about it. Witness never understood from Klady that he was at the wheel.

(The counsel for the libellants here reserved his objections to the above testimony as to the collision between the Norma and the H. L. White, as being irrelevant, hearsay, and illegal.)

Witness states that, from his knowledge of the character of Klady for prudence as a pilot, he would not be willing to travel upon any boat on which he was pilot.

(The counsel for the libellants objects to this evidence, as being irrelevant and illegal.)

Cross-examined.

States that he is 28 years of age; that he never associated with Klady particularly; that when he came to Monroe, where he, witness, lived, he spoke to Klady whenever he saw him; and that Klady was overseering in the neighborhood of Monroe; that he has never had any personal difficulty or quarrel of any kind with Klady. Being asked if he ever felt uneasy when in Klady's presence, fearful that he would cut his throat or blow his brains out, answered, Oh! no. Being asked if the people generally cleared the streets, and ran into their houses, when they saw Klady at Monroe, answers, that he never saw anything of the sort; that it was never considered to be more dangerous in Klady's presence than in that of any one else; that he has seen Klady associate with the persons of his acquaintance, as he has seen other people associate with their acquaintance.

Witness states that he was raised in Missouri; and that he follows the business of a house painter. Witness being asked whether Klady was regarded as a man of courage, answers, that he does not know; that there was a diversity of opinion upon the subject—some speaking well of him, others against him; that he, witness, considered him a man of courage. Witness being asked what circumstances have occurred to induce him to believe that Klady was a reckless man, answers, that he judges so from circumstances: 1st. From the accidents occurring when he was a pilot on the two steamboats. 2d. From having heard that he shot two negroes on the plantation when he was overseering. Being asked if he knew the facts of his own personal knowledge, answers that he does not; but that it was a matter of public notoriety in the neighborhood where he lived; that the matter underwent judicial investigation, but witness did not know the result of it. This judicial investigation was in a suit for damages; witness states that he was asleep at the time of the collision between the Buckeye and the De Soto; that, as soon as he could, he went upon the hurricane deck of the Buckeye, and got upon the De Soto, upon which boat he came to New Orleans; that he arrived on Saturday morning, and on Sunday morning he went in the Elizabeth to Ouachita; and that he came to New Orleans on the Agnes this last time. Witness being asked whether he paid any thing for his passage in the De Soto, answers that he did not; that no one applied to him for payment; and he understood, from the passengers, that pay was received only from those who offered it; that no demand was made upon those who did not offer it, and he, witness, never offered it, and has not since been presented with any bill. Witness being asked the question whether, after the collision, the heads of the two boats pointed up or down stream? Answers, that they pointed up stream. The collision, witness understood, occurred about 2 o'clock; and that he observed the position of the boats in the morning, and not before; it was about sunrise that he observed the position of the boats; when

the steamboat South Western was ascending the river, and from her course, the bows of the two boats, the Buckeye and the De Soto, were inclining into the willow shore.

Examination in chief resumed.

States that, on going up in the Buckeye, he felt uneasy about the boilers, but did not at that time think of Klady; he was apprehensive of the boilers, because he was satisfied that the Buckeye was an old boat from hearsay, and that she had been running many years.

Cross-examination resumed.

States that he has known the Buckeye for about two years or less; but that he has heard that a boat of that name had been running since 1839, and he was satisfied of its being the same boat. Witness states that the De Soto was loaded with cotton; and that there was a space between the cotton and the jack staff of about ten or twelve feet.

Signed, PETER JARVIS.

April 26th, 1844.

Thomas C. Waples, witness for the respondents, being sworn, is a pilot, and has followed that business for a little upwards of nine years; and has been running in the Red river trade constantly during that period, and is acquainted with the navigation of Old river. In ascending Old river by the lower mouth, would run the left hand side up, and not run up on the island shore, unless the wind was setting off from that shore; would not run up on the island shore more than two or three hundred yards before crossing over; if he went on that shore at all, would run up on the bar shore within two or three hundred yards of the willows, if running alone; if in company with another boat would run right along side of them. Is now engaged on the Coté Joyeuse. The Buckeye now lies inside of one snag, and outside of several others. If the collision occurred where the Buckeye now lies, and the Buckeye had, before it, been running up on the bar shore, or the left side ascending, could she, or not, have avoided the collision by changing her course? Yes, if she had been running that side before the collision, she could have avoided it by going nearer the bar. How much nearer could she have gone with safety? Answers, three or four hundred yards. Should not consider the place, where the Buckeye now lies, the proper place for an ascending boat, if she should be meeting a descending boat. If he were ascending on the island shore, and should meet a boat descending, should not attempt to cross, until the ascending boat had passed, unless he had plenty of room to do so, before he could meet her in crossing by her intersecting his line, would not attempt it under a half of a mile.

Cross-examined.

Suppose witness were ascending on the island side of Old river within one hundred yards of said shore, and another were descending, within three hundred yards of said shore, at a distance not quite half a mile from witness's boat; would not you think yourself safe in crossing there? He would not, in that case, consider himself safe in crossing

until she had passed. Suppose she was only one hundred yards from the island shore, and your boat the same distance, and the two boats a half a mile apart, would you consider yourself safe in crossing? Does not know whether he would be safe or not; that, in that case, he would either stop, or try to get out of her way in some manner; would consider himself safe in crossing under those circumstances, unless the other boat should change her course, and come after him. Whether he would cross or not would depend very much on how far the other boat stood out from the same shore on which he was running. Has heard it said, and believes it true, that Captain Kimball is part owner of the Cote Joyeuse; and Capt. Kimball, being present here, says it is true. It is a general rule among steamboatmen, that the ascending boat takes the bar, and the descending boat the bend, except in some cases, where the river won't admit of it. There are several places in the river where there are sand bars in the bend shore, and then the boat descending is obliged to keep the channel of the river, the descending boat, as a general rule, keeps the channel. Has been on several boats with Capt. McGuire, and is acquainted with his reputation as a pilot, and has never heard it said that he could not see well at night; and witness believes his eye sight is as good as that of any man in the world. Do you know of any thing of this sort: that, some time last winter, the De Soto was running some little distance behind the Southwestern coming down Red river, and was run into a bank? Recollects the circumstance alluded to; it was winter before last, and the boat was not run into the bank. Witness did not see her run into the bank; she floated along side of the bank, but does not think she touched. They caught the Southwestern in a very short bend, and had to stop until she got out of it, and float until she got out of it before passing her, as the river was too crooked there to pass her until she got out of the bend. Capt. McGuire was then at the wheel. Witness was then in the De Soto engaged as a pilot, but not then on watch, but was standing on the hurricane deck directly in front of the pilot house; both boats were nearest the bend shore; and the river there is pretty narrow. The De Soto passed the Southwestern after they got out of the bend, both going, at the time of passing, as near the middle of the river as they could. Thinks Capt. Kimbal has been an owner of the Cote Joyeuse ever since she came out. The passing of the Southwestern was about 25 miles above Alexandria, opposite the plantation of Mr. Auguste Baillio.

Signed, THOS. C. WAPLES.

Interrogatories and answers.

Clerk's office, U. S. district court, eastern district of Louisiana, May 2d, 1844.

GEORGE H. CALDWELL and als, master and owner of the steamer Buckeye,
vs.
KIMBALL & REED, master and owners of the steamboat De Soto.

Evidence taken, by consent of parties, before the clerk acting as commissioner.

Joseph F. Lodwick, witness for respondents, being duly sworn to answer the interrogatories to be propounded to him in the above entitled suit, deposes:

Int. 1. Were you on board the Robert T. Lytle, about the first of November, 1842?

Answers. That he was on board the Robert T. Lytle, on or about the first of November.

Int. 2. Did not the Robert T. Lytle run aground in the outlet which comes from Old river, the upper side of Red river island, into the Mississippi?

Answers. That she did.

Int. 3. Did you see any other boats aground in that outlet, or hear of any other boats being aground in that place, and what boats were they?

Answers. That he saw the Vermilion aground there, and heard of the Coté Joyeuse being aground there.

Int. 4. Was not the current, through this outlet from Old river to the Mississippi, excessively rapid at that time.

Answers. That it was.

Int. 5. How much do you think the fall was at that time from the end of the bar, above Red river island, out into the Mississippi?

Answers. That he feels safe in saying the fall would be three feet.

Int. 6. At the time you were aground with the Robert T. Lytle, was there not a bar across the lower mouth of Old River?

Answers. There was.

Int. 7. How high do you think that bar was above low water mark?

Answers. That it was between three and four feet, as near as he could calculate.

Int. 8. Have you not, during the high stages of the Mississippi, seen a current in from the Mississippi towards Red river and the Atchafalaya?

Answers. That he cannot say that he ever did.

Int. 9. Is not the bar, on both sides of the Red river island, increasing yearly; and is it not apprehended that that bar will eventually shut off Red river from the Mississippi?

Answers. That the bar, as described, is increasing yearly, and that public opinion seems to be, that the bar will eventually shut off Red river from the Mississippi.

Int. 10. Do you believe it possible that any tide in the Mississippi can affect Old river?

Answers. That he does not.

Cross-interrogatories.

Int. 1. Have you ever measured the fall of Old river at its upper mouth during low water in the Mississippi, or at any time? If yea, state how you measured it, and the result.

Answers. That he has never measured the fall of Old river, as described, at any time.

Int. 2. Do you not think it impossible that a tide could affect the Mississippi river, when it is eight or ten feet above low water mark, without having an influence upon the water in Old river?

Answers. That he thinks no tide in the Mississippi river could have any influence upon the water in Old river.

Signed, JOSH. F. LODWICK.

May 2d, 1844.

John Johnson, witness for respondents, being duly sworn to answer the interrogatories propounded to him in the above entitled suit, deposes as follows:

Int. 1. Are you a steamboat pilot in the Red river trade? And if so, please state how long you have been a pilot on Red river.

Answers. That he is a steamboat pilot in the Red river trade, and that he has been so employed for 10 or 12 years.

Int. 2. Are you acquainted with the place, or do you know where the Buckeye is sunk; and if you do, was she in the right place for an ascending boat; if not in her right place, how far was she out of it; or was she in the right place for a boat to be crossing the river, when there was a boat descending?

Answers. That he knows where the Buckeye is said to have been sunk, from a piece of stanchion sticking out of the water; and, being there, she is not in the right place for an ascending boat—in the place where witness usually runs a boat. That witness usually runs a boat two or three hundred yards nearer the bar, at the stage of water when the Buckeye was sunk; and she was not in a right place for a boat to be crossing the river when there was a boat descending.

Int. 3. Are you acquainted with Old river; and if so, how would you enter it at the lower mouth on the lower side of the island; would you keep up the island or bar shore, ascending; if the bar shore, how near the willows would you run; if the island shore, how far up would you go before crossing to the bar?

Answers. That he is acquainted with Old river; that he would enter it at the lower mouth about the middle of the river, or nearer the willows; that, ascending, he would keep up the bar shore; that at night he would keep from two to three hundred yards off the willows; that that would be the most usual distance for boats to run, either night or day. Witness states that he never ran up the island shore.

Int. 4. If you were ascending the island shore, and saw a boat descending in the middle of the river, what distance ought she to be off, to make it safe for you to cross over to the bar?

Answers. That, generally, the descending boat ought to be two miles off to make it safe; but that this would vary, to some degree, according to circumstances; but never less than a mile and a half.

Int. 5. How high is the bar on the lower side of Red river island, which shuts off Old river from the Mississippi, above low water mark; and is not Old river, on the lower side of Red river island, a pond of

stagnant water during the low water season, or for three or four months in the year?

Answers. That the bar described, is from ten to twelve feet above low water mark, and that Old river, at the point described, on the lower side of Red river island, is a pond of stagnant water during the low water season, and for three or four months in the year.

Int. 6. How much is the fall from low water mark of Old river above Red river island, (the only outlet in that stage of water from Old river to the Mississippi,) above the low water mark of the Mississippi river?

Answers. That he judges the fall to be from three to five feet.

Int. 7. How much do you suppose that the bar has increased in height; or what depth of deposite has taken place on the bar which obstructs the outlet from Old river into the Mississippi, since November, in 1842?

Answers. Witness says this is a difficult question to answer, inasmuch as there is now a sufficiency of water on the bar, and he has never had an opportunity of measuring it; but from the eddy running there, as it formerly has done, the probability is, that it has increased since November, 1842, and is still increasing.

Int. 8. If the Mississippi should be as low this coming low water season, as it was in November, 1842, do you not think there will be a dry bar across the mouth of the Old river, so as to close entirely all water communication between the Mississippi and Old or Red river; and if you do, how high would that bar be above the low water mark of the Mississippi?

Answers. Witness says it is a very doubtful matter; that he does not like to state that he thinks a dry bar, under the circumstances as stated, would be made across the mouth of Old river, although he very much fears there will be; and, should a dry bar be ever made, he thinks it would be from 6 to 8 feet above the low water mark of the Mississippi.

Int. 9. Do you think it possible for the tide to affect Old river, or do you believe that it can affect it?

Answers. That it is possible, although not very probable, that the tide does affect Old river, but witness has never observed whether it does or does not.

Int. 10. How many revolutions, back, of the De Soto's engines, would it require to stop her headway on Old river, with 890 bales of cotton on board?

Answers. That he thinks it would take about ten, and perhaps not so many.

Cross-interrogatories.

Int. 1. Are you interested, directly or indirectly, in the event of this suit?

Answers. That he is in no way interested.

Int. 2. What is the usual rule of boats meeting on the river; which keeps the bend, and which the bar, if one be going up and the other coming down?

Answers. That the ascending boat keeps the bar, and the descending the bend.

Int. 3. If you say you know where the hull of the Buckeye now lies, was it on the inside or outside of the snags; does her hull lie towards the island shore, or towards the bar shore, from the snags; does the hull of the Buckeye lie in the middle of the river, or does it lie nearer one shore than the other; if so, which shore is it nearest?

Answers. That the hull is on the inside of one or two snags, and on the outside of one, he thinks; that her hull lies towards the bar shore of one or two snags, as abovementioned, and towards the island shore of the other. The hull appears to be about the middle of the river, and perhaps a little nearer to the bar shore.

Int. 4. If the De Soto had kept the middle of the river, or had run between the middle and the island shore, would the collision have happened?

Answers. That the collision would not have happened, if the De Soto had run between the middle of the river and the island shore, in reference to where the Buckeye now lies.

Int. 5. Did you ever measure the bar across the lower mouth of Old river, at low water; does not the water in Old river, at all seasons of the year, have communication with the Atchafalaya river, and with the Mississippi river, through the upper mouth of Old river?

Answers. That he never measured the bar at any time, and that he believes the water in Old river, at all seasons of the year, has communication with the Atchafalaya river, and always has had communication with the Mississippi river, through the upper mouth of Old river.

Int. 6. Did you ever measure the fall in Old river, at its upper mouth, in low water; if yea, when did you do so, and who was present?

Answers. That he never measured it.

Int. 7. If Red river is cut off from the Mississippi, by a bar, in low water, where will the water of Red river flow; do you think this will happen during the next season?

Answers. That the water of Red river would flow down the Atchafalaya; and he thinks there is a great deal of uncertainty whether a bar will be formed this season or not.

Int. 8. If you say any thing about the tide in Old river, you will please state whether you have ever made any observations, for the purpose of ascertaining whether the tide did affect it, what those observations were, and who was present when you made them?

Answers. That he has never made any observations for the purpose of ascertaining whether the tide affected Old river or not.

Int. 9. If the De Soto were running down stream, at the rate of eight or ten miles an hour, loaded with cotton, were suddenly to commence backing, how many evolutions of her wheel, back, would it take to stop her still with the water; is this merely your opinion, or have you ever made the experiment with the De Soto?

Answers. The answer to this, witness states, is given in a previous

interrogatory, and he gives it merely as an opinion, and not as an experiment made with the De Soto; that it would take from 8 to 10 evolutions to stop her still, under the circumstances as above given.

Signed, JOHN W. JOHNSON.

Sworn to and subscribed before me, this 2d day of May, 1844.

Signed, N. R. JENNINGS,
Clerk and acting com'r.
May 7th, 1844.

Horace Condit, witness for respondents, being duly sworn to answer the interrogatories propounded, deposes as follows:

Int. 1. How long have you been engaged in the Red river trade, and in what capacity?

Answers. That he has been engaged upon the Red river trade since 1830, excepting the winter of '37, in the capacity of an engineer.

Int. 2. Were you on board the Cote Joyeuse about the first of November, 1842, when that boat was aground in the outlet from Old river to the Mississippi, and how long was that boat aground there; what other boats did you see or hear of being aground there, during that season?

Answers. That he was on board the Cote Joyeuse, at the time and place mentioned, and she was aground from six to eight days; the Vermillion, Star, the Lytle, Port Gibson, and Swan, were also aground during the same season, and they were aground from 12 to 24 hours.

Int. 3. Was there not, at that time, a bar across the lower mouth of Old river, shutting it off entirely from the Mississippi; and how high do you think that bar was above the waters of the Mississippi?

Answers. That there was a bar as described, which seemed to be from four to ten feet above the waters of the Mississippi, which bar was entirely dry.

Int. 4. Was not the water on Old river, on the lower side of the island, stagnant, and offensive to the smell, when you were aground there, in the outlet, on the Cote Joyeuse?

Answers. That the water at the part of Old river as described, at that time was stagnant, but he does not remember whether it was offensive to the smell or not.

Int. 5. Was not the current through this outlet from Old river extremely rapid, when the Cote Joyeuse was there aground?

Answers. That it was, and so much so that four men could not pull up the yawl of the Cote Joyeuse against the current; that witness saw the experiment made.

Int. 6. How much fall do you think there was at that time, from the upper end of the bar, above the island in Old river, through this outlet into the Mississippi?

Answers. That he thinks there was about from two to five feet fall.

Int. 7. Do you believe it possible that any tide in the Gulf of Mexico can affect Old river, or that it is ever affected in height, save by waters descending the Red river, or the Mississippi?

Answers. That he thinks no tide in the Gulf of Mexico affects Old

river; and that its height, he thinks, is not affected, save by the descent of waters from the Red river on the Mississippi.

Int. 8. Is it not your opinion, and public opinion generally, so far as you have heard it expressed, that the waters of Red river will go down the Atchafalaya, and that the bar at the outer end of Red river island is yearly increasing, and, if let alone, will shut Red river off entirely from the Mississippi?

Answers. That it is his opinion, and he believes the public opinion generally, that the bar of the outer end of Red river island is increasing yearly, and that he thinks it will be perfectly dry this season, if the Mississippi is at its usual low water stage; and that, if let alone, it will eventually shut Red river off entirely from the Mississippi.

Cross-interrogatories.

Int. 1. Was the Mississippi high, or not, when you saw vessels aground at the upper mouth of Old river?

Answers. That it was low, although not at its lowest stage of water; witness has seen it four or five feet lower.

Int. 2. Did you ever measure the fall of Old river at its upper mouth; if yea, how did you measure it; when, and what was the result?

Answers. That he never measured it.

Int. 3. Did you ever make any observations to ascertain whether there was any effect from tide on Old river?

Answers. That he never made any observations particularly; but that whilst witness was there on the Cote Joyeuse, laying there for eight days, he did not notice any change in the rise and fall of the river, and thinks there was none at all; he observed no change, and thinks that he could have known it, as they remained some six or eight days, endeavouring to get the Cote Joyeuse off. The only change witness observed, whilst he lay there, was, that the bar increased at the bows some fifteen yards ahead; but that, he believes, was made by the current of the river, as the boat lay below, and there was no chance for the deposite to run off.

Signed, HORACE CONDIT.

Sworn to and subscribed before me, this 7th day of May, A. D. 1844.

Signed, N. R. JENNINGS, *Clerk.*

May 7th, 1844

Andrew Carlisle, witness for respondents, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Int. 1. Are you acquainted with the navigation of Old river; how would you enter it at the lower mouth; would you keep the island or the bar shore; if the bar shore, how near the willows would you run?

Answers. That he is acquainted with the navigation of Old river; in entering at the lower mouth witness would run nearer th willows than the island, that is, the bar shore; he would keep not more than 100 yards from the willows all the way around; and, its entrance being narrower, of course he would be nearer still.

Int. 2. Do you know where the Buckeye was sunk; was she in the

right place for a boat ascending; and, if not, how far was she out of it?

Answers. That he was directed to the place where she was sunk, which was distinguished by a piece of wood, being a part of the boat sticking out; she was not in her right place for an ascending boat, and was at least two hundred yards out of it.

Int. 3. Is there not a bar across Old river, shutting it off from the Mississippi on the lower side of the Red river island; how high is that bar above the water when there is enough for any navigation through the outlet to the upper side of Red River island?

Answers. There is a bar, as described, and it is about ten feet above the stage of water, as mentioned in the interrogatory.

Int. 4. Were you not aground, in the outlet from Old river to the Mississippi, in the steamboat Swan, about the 1st of November, 1842; and what other boats have you seen aground there?

Answers. That he was not aground there in the Swan; but the current was so strong that they had to warp her through; and he was detained there some 14 or 15 hours. He saw the Cote Joyeuse aground there at the time; and another time witness saw the Port Gibson aground there.

Int. 5. How much do you consider the fall was from the upper side of Red river island, through the outlet to the Mississippi, at the time you were aground there in the Swan?

Answers. That the time he was there in the Swan he judges the fall to have been two feet and a half.

Int. 6. How much do you think the bar across the outlet from Old river increased from 1st of November, 1842, to the 1st November, 1843, and is it not constantly increasing during high water?

Answers. That he thinks the bar has increased about five feet, and that it is constantly increasing during high water.

Int. 7. Is not Old river, on the lower side of Red river island, a pond of stagnant water three or four months in the year?

Answers. That it is.

Int. 8. Is it not generally believed that the Red river is going down the Atchafalaya, and that the bar at the outer end of Red River island will eventually shut off Red river from the Mississippi?

Answers. That it is generally believed that the Red river is going down the Atchafalaya, and that, unless the Atchafalaya should be stopt up, the bar at the outer end of Red river island will eventually shut off Red river from the Mississippi.

Int. 9. Do you believe it possible that any tide from the Gulf of Mexico can affect Old river, or any other tide that does not come down the Mississippi or Red river?

Answers. That he does not believe it possible.

Cross-interrogatories.

Int. 1. Are you interested in the event of this suit; are you in the employment of either of the parties; if yea, which one?

Answers. That he is not interested in the event of this suit; that he

is at present a pilot on board the Cote Joyeuse, and that he is not employed by either of the parties.

Int. 2. What is the usual rule of boats passing that meet on the river; which boat keeps the bar, and which the bend—the ascending or descending boat?

Answers. The ascending boat keeps the bar, and the proper course for the descending is to keep the middle of the river.

Int. 3. Describe particularly the navigation before you enter Old river, and after.

Answers. That, on entering Old river, he being of course upon the ascending boat, would follow the bar, both before and after entering it; and if upon a descending boat, he would keep the middle of the stream from the mouth of Red river down.

Int. 4. If you say you know where the hull of the Buckeye lies, or the place where she was sunk, please state how you know the same; is she in the middle of the river or not; if she is not, which shore does she lie nearest to?

Answers. That he has already answered by what direction the wreck of the Buckeye was pointed out to him; a passenger who had been on the De Soto also showed witness the place, distinguished by a piece of stancheon sticking out of the water; that her wreck lies as near the middle of the river as he could judge; and if she does lie nearer either shore, it is the bar shore.

Int. 5. If the collision took place where the Buckeye was sunk, was the De Soto in the proper place for a vessel ascending; if not, where would have been her proper place; do you know the soundings across the river at that place; and, if so, how far from where the Buckeye was sunk is the deepest water, and towards which shore?

Answers. That the De Soto was in her proper place for a descending boat, to wit, near about the middle of the river; he does not know the soundings, but should judge that the water was as deep where the collision took place as in any other part of that river.

Int. 6. Is it usual for vessels descending to run near the bar, or do they generally follow the current and the deepest water; is not the rule observed more particularly at night than during the day?

Answers. They generally follow the current and the deepest water; and that it is observed no more particularly at night than during the day.

Int. 7. If you say anything about the fall of Old river at its mouth, or the height of the bar at the lower mouth, state whether you ever measured either shore; did you ever make any particular observations to ascertain whether there was any tide in Old river; if yea, state what they were, and how long continued, and when made?

Answers. That he never measured either shore, and that he never made any particular observations to ascertain whether there was any tide in Old river or not.

Signed, ANDREW CARLISLE.

Sworn to and subscribed before me, this 7th May, 1844.

Signed, N. R. JENNINGS,
Clerk and Acting Comm'r.

May 9th, 1844.

David McGuire, witness for respondents, being duly sworn to answer the interrogatories propounded, deposes as follows:

Int. 1. Were you on board the Cote Joyeuse about the first of November, 1842, when that boat was aground in the outlet from Old river to the Mississippi; and what other boats did you see or hear of being aground there during that season; and what depth of water was there on the bar at that time?

Answers. That he was on board the Cote Joyeuse about the 1st of November, 1842, when she was aground at the place described, and that he also saw the Port Gibson and the Vermillion aground there, and also the Swan; that he heard of the Star being aground there at that season; at that time, when the said boats were aground there, there was about two feet water on the bar.

Int. 2. Was you on the Cote Joyeuse, in August, 1843, when that boat was again aground in the same outlet from Old river, and what was the depth of water on the bar then; was it more, or less, than the year previous?

Answers. That he was on the Cote Joyeuse in August, 1843, when that boat was again aground in the same outlet from Old river, and that the depth of water on the bar was something less than it was the year previous.

Int. 3. At the lowest stage of water in this outlet, during the low water of 1843, how much higher was the Mississippi opposite that place than it was about the first of November, 1842, when you were aground there, than the year previous?

Answers. That it was as much as six feet higher.

Int. 4. Did you not sound the Atchafalaya, in August, 1843, soon after the Cote Joyeuse was aground in the outlet from Old river, and what depth of water did you find there?

Answers. That he did sound it, and found two fathom.

Int. 5. Is it not your belief, and that of the public generally, that Red river will go down the Atchafalaya, and that the bar at the outer end of Red river island will shut the Mississippi off entirely from Red river?

Answers. That it is his belief, and, as far as he knows, it was the belief of the people generally on Red river, that the Red river will go down the Atchafalaya, and that the bar at the outer end of Red river island will shut the Mississippi off entirely from Red river, unless something occurs to prevent it.

Int. 6. Is there not a bar across the lower mouth of Old river, and have you not noticed it for several years?

Answers. That there is a bar, and that he has noticed it for several years, since the year 1838.

is at present a pilot on board the Cote Joyeuse, and that he is not employed by either of the parties.

Int. 2. What is the usual rule of boats passing that meet on the river; which boat keeps the bar, and which the bend—the ascending or descending boat?

Answers. The ascending boat keeps the bar, and the proper course for the descending is to keep the middle of the river.

Int. 3. Describe particularly the navigation before you enter Old river, and after.

Answers. That, on entering Old river, he being of course upon the ascending boat, would follow the bar, both before and after entering it; and if upon a descending boat, he would keep the middle of the stream from the mouth of Red river down.

Int. 4. If you say you know where the hull of the Buckeye lies, or the place where she was sunk, please state how you know the same; is she in the middle of the river or not; if she is not, which shore does she lie nearest to?

Answers. That he has already answered by what direction the wreck of the Buckeye was pointed out to him; a passenger who had been on the De Soto also showed witness the place, distinguished by a piece of stancheon sticking out of the water; that her wreck lies as near the middle of the river as he could judge; and if she does lie nearer either shore, it is the bar shore.

Int. 5. If the collision took place where the Buckeye was sunk, was the De Soto in the proper place for a vessel ascending; if not, where would have been her proper place; do you know the soundings across the river at that place; and, if so, how far from where the Buckeye was sunk is the deepest water, and towards which shore?

Answers. That the De Soto was in her proper place for a descending boat, to wit, near about the middle of the river; he does not know the soundings, but should judge that the water was as deep where the collision took place as in any other part of that river.

Int. 6. Is it usual for vessels descending to run near the bar, or do they generally follow the current and the deepest water; is not the rule observed more particularly at night than during the day?

Answers. They generally follow the current and the deepest water; and that it is observed no more particularly at night than during the day.

Int. 7. If you say anything about the fall of Old river at its mouth, or the height of the bar at the lower mouth, state whether you ever measured either shore; did you ever make any particular observations to ascertain whether there was any tide in Old river; if yea, state what they were, and how long continued, and when made?

Answers. That he never measured either shore, and that he never made any particular observations to ascertain whether there was any tide in Old river or not.

Signed, ANDREW CARLISLE.

Sworn to and subscribed before me, this 7th May, 1844.

Signed, N. R. JENNINGS,
Clerk and Acting Comm'r.

May 9th, 1844.

David McGuire, witness for respondents, being duly sworn to answer the interrogatories propounded, deposes as follows:

Int. 1. Were you on board the Cote Joyeuse about the first of November, 1842, when that boat was aground in the outlet from Old river to the Mississippi; and what other boats did you see or hear of being aground there during that season; and what depth of water was there on the bar at that time?

Answers. That he was on board the Cote Joyeuse about the 1st of November, 1842, when she was aground at the place described, and that he also saw the Port Gibson and the Vermillion aground there, and also the Swan; that he heard of the Star being aground there at that season; at that time, when the said boats were aground there, there was about two feet water on the bar.

Int. 2. Was you on the Cote Joyeuse, in August, 1843, when that boat was again aground in the same outlet from Old river, and what was the depth of water on the bar then; was it more, or less, than the year previous?

Answers. That he was on the Cote Joyeuse in August, 1843, when that boat was again aground in the same outlet from Old river, and that the depth of water on the bar was something less than it was the year previous.

Int. 3. At the lowest stage of water in this outlet, during the low water of 1843, how much higher was the Mississippi opposite that place than it was about the first of November, 1842, when you were aground there, than the year previous?

Answers. That it was as much as six feet higher.

Int. 4. Did you not sound the Atchafalaya, in August, 1843, soon after the Cote Joyeuse was aground in the outlet from Old river, and what depth of water did you find there?

Answers. That he did sound it, and found two fathom.

Int. 5. Is it not your belief, and that of the public generally, that Red river will go down the Atchafalaya, and that the bar at the outer end of Red river island will shut the Mississippi off entirely from Red river?

Answers. That it is his belief, and, as far as he knows, it was the belief of the people generally on Red river, that the Red river will go down the Atchafalaya, and that the bar at the outer end of Red river island will shut the Mississippi off entirely from Red river, unless something occurs to prevent it.

Int. 6. Is there not a bar across the lower mouth of Old river, and have you not noticed it for several years?

Answers. That there is a bar, and that he has noticed it for several years, since the year 1838.

Int. 7. When you were aground in the Cote Joyeuse, in 1842, was not the water on the lower side of Red river island a pond of stagnant water, offensive to the smell?

Answers. That it was a pond, and offensive to the smell.

Int. 8. How much was that bar, on the lower side of Red river island, above low water of 1842 on the Mississippi river?

Answers. That the bar was as much as seven feet above.

Int. 9. Should the Mississippi go down to its lowest stage this coming October or November, do you not believe there will be a dry bar between Old river and the Mississippi, separating them entirely; and if so, how high do you think that bar will be above the level of the Mississippi?

Answers. That he believes there will be a dry bar between Old river and the Mississippi, separating them entirely, if the Mississippi goes down to its lowest stage, this coming October or November; and that, if the bar rises in proportion to what it has hitherto done, it might be, he thinks, three feet higher than the level of the Mississippi.

Int. 10. Did you ever notice a current from the Mississippi, running in towards the Red river and Atchafalaya?

Answers. That he has noticed a current, when the Mississippi is at a high stage.

Int. 11. How much do you think the bar above the Red river island increased in length, into Old river, since November, 1842, and how much in height?

Answers. That it has increased in length as much as two hundred yards; and, judging from the difference of the Mississippi, in 1842 and 1843, he should say the bar has increased in height as much as three feet.

Int. 12. How many years have you been acquainted with the Mississippi, from New Orleans to Red river, and how long since you have been a pilot or steamboat master in that trade?

Answers. That he has been acquainted with it for the rise of twenty years, and about the same space of time he has been a pilot or steamboat master in that trade.

Int. 13. Do you believe it possible that any tide from the Gulf of Mexico can affect the Mississippi as high as the Red river island; and, if you should think it possible, do you believe that it would in any way affect Old river, or can that river be swollen, save by waters coming down the Red river and the Mississippi?

Answers. That he does not believe that any tide from the Gulf of Mexico can affect the Mississippi as high as the Red river island; does not think that it could possibly affect Old river; and that river, he thinks, can be swollen only by waters coming down the Red river and the Mississippi.

The admissibility of Mr. McGuire, as a witness, is objected to by the libellants.

Cross-interrogatories.

Int. 1. Have you been examined in this case before?

Answers. That he has been examined in this case before, commenced by the committee of the Legislature, and completed before Recorder Baldwin, in regard to the collision.

Int. 2. Have you ever measured the fall of Old river, at the upper mouth, at low water in the Mississippi? If yea, when and how did you measure it, and what was the result?

Answers. That he has never measured the fall, as specified.

Int. 3. Did you ever make any particular observations to ascertain whether there was, or there was not, a tide in Old river? If yea, state what was the nature of those observations, how long they were continued, and when you made them.

Answers. That the only observations he ever made was that at the mouth of the Atchafalaya river he discovered a fall of two or three inches, occasioned by easterly winds, and not by the waters of the Mississippi, and that it had also fallen in Old river, to the same degree, from the same causes—that part of Old river between the Atchafalaya and Red river; this being the only time witness ever observed any change in the waters of Old river.

Signed, D. MACGUIRE.

Sworn to and subscribed before me, this 9th day of May, A. D. 1844.

Signed, N. R. JENNINGS,
Commissioner.
May 10th, 1844.

E. Parker, witness for respondents, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Int. 1. Were you clerk of the steamboat De Soto when the collision took place between that boat and the Buckeye, on the morning of the 1st of March last?

Answers. That he was.

Int. 2. How many bales of cotton were on board the De Soto at that time, and was there any other cargo on board? If yea, what was it, and how much was there?

Answers. There were 818 bales of cotton on board at that time, and there was no other cargo of any account.

Int. 3. How many bales of cotton were on board the steamboat De Soto on the 7th of May, when the experiments *was* made, in Old river, to ascertain how many revolutions back of the De Soto's engine would stop her headway; and how many cords of wood were on board the De Soto, when the above experiment was made?

Answers. There were 372 bales of cotton on board, and between 65 and 70 cords of wood.

Int. 4. Would, or would not, the wood and cotton on board the De Soto, on the 7th May, when the above experiment was made, make the De Soto as deep as when the collision took place, on the 1st March last, with the Buckeye?

Answers. That he thinks it would make her nearly as deep.

Signed, E. PARKER.

Sworn to and subscribed before me, this 10th day of May, 1844.
Signed, N. R. JENNINGS, *Clerk.*
Cross interrogatories waived.

Charles V. Ledoux, witness for respondents, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Int. 1. Please state your occupation, and where do you reside?

Answers. That he is clerk of the district court of the 6th judicial district, and that he resides in Alexandria, in the parish of Rapides.

Int. 2. Were you on board the De Soto, on the 7th of May, on Old river, when that boat was tried, to see how many revolutions it would take to stop her headway by backing her engines?

Answers. That he was.

Int. 3. How many revolutions back were made by the engines before the De Soto had steam way on her; and how far had the head way of the boat carried her from the time her engines were stopped until she was still, or had stern way on her?

Answer. That she made about four revolutions to each engine; that an object was in witness's view by which he could tell when the boat was stopt, and when she was making stern way.

Int. 4. Previous to this experiment being tried, was the De Soto running at her usual speed, or faster or slower than usual?

Answers. That the De Soto was running faster than usual; he judges so from the fact that he left Alexandria on the De Soto at 9 o'clock A. M., and that he reached Old river, or that part of it where the experiment was made between 6 and 7 o'clock, P M., which was made in less time than witness ever made the trip before.

Signed, C. V. LEDOUX.

Sworn to and subscribed before me, this 10th day of May, A. D. 1844.
Signed, N. R. JENNINGS, *Clerk.*

Charles A. F. Rondean, being duly sworn to answer the interrogatories propounded to him, being the same as those propounded to the above deponent, C. V. Ledoux, deposes as follows:

To the first interrogatory—

Answers. That he resides in the city of New Orleans, and that he is a clerk in the City Bank of New Orleans.

Int. 2. Answers. That he was on board the De Soto at the time specified in the interrogatory.

3d interrogatory.

Answers. That three revolutions were made by the engines, which stopt her head way, and gave her a slight motion astern; and her headway carried her about 150 yards, about one hundred of which was previous to the backing of the engines.

4th interrogatory.

Answers. That she was running about her usual head of steam, as near as witness could judge. Witness states that he timed the number of revolutions she made, and they were about 16 or 17 to the minute.

Signed, CHAS. A. F. RONDEAU.

Sworn to and subscribed before me, this 10th day of May, 1844.
Signed, N. R. JENNINGS, *Clerk.*

John C. Thompson, being duly sworn to answer the interrogatories propounded to him, deposes and says:

Int. 1. Are you an engineer, and practically acquainted with steamboating? If yea, how many years have you been acquainted with such matters?

Answers. That he is an engineer, and practically acquainted with steamboating; and that he has been acquainted with such matters for fifteen years.

Int. 2. Were you on board the De Soto, in Old river, on Tuesday, the 7th May, when the experiment was made with that boat, to see how far she would run after her engines were stopt, before her headway should be lost by the backing of her engines?

Answers. That he was on board the De Soto at the time specified.

Int. 3. How many revolutions back were made with each engine before the boat had lost all headway, and how many revolutions before she had sternway on her?

Answers. That she made three revolutions with one engine and three and a half with the other before she had lost all headway, and was beginning to move back, or had sternway on her.

Int. 4. At what rate per mile do you think the De Soto was running when she was stopped to try the above experiment?

Answers. That he thinks the De Soto was running, at that time, at the rate of 12 or 13 miles an hour.

Int. 5. Do you think that three or four hundred bales of cotton more on board would have made any difference in stopping and backing the boat?

Answers. That he thinks it would have the difference of half a revolution.

Int. 6. What distance did the De Soto run after her engines were stopped until her headway was entirely lost?

Answers. That, as nearly as he could judge, she ran about a length and a half.

Signed, JOHN H. THOMPSON.

Sworn to and subscribed before me, this 10th day of May, A. D. 1844.
Signed, N. R. JENNINGS, *Clerk.*

New Orleans, June 7th, 1844.

GEORGE H. CALDWELL,
vs.
THE STEAMBOAT DE SOTO, Master, and Owners.

Evidence taken by consent before N. R. Jennings, commissioner.

John A. Stevenson, witness for respondent, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Int. 1. Are you much acquainted with the business of steamboats; and

have you much knowledge of the value of steamboats; and in what way have you acquired such knowledge?

Answers. That he is well acquainted with the business of steamboats, and that he is pretty well acquainted with their value, having owned steamboats himself, and being interested in them with others; that at present he is part owner of the steamer Fort Towson.

Int. 2. Did you know the steamboat Buckeye, lately lost in Old river by a collision with the De Soto; and are you able to give an opinion respecting the value of the Buckeye?

Answers. That he knew the steamer Buckeye, lately lost in Old river; that he has known her some five or six years; and he thinks her value, at the time of her being lost, about fifteen hundred dollars.

Int. 3. Do you know how long the Buckeye had been running previous to her being lost; at what time, and when, was she built; and what is your opinion was she worth when she was lost?

Answers. That the steamer Buckeye has been running, previous to her being lost, since the winter of 1837, when witness first saw her; that she was built in Cincinnati; witness does not know at what time; and his opinion of her value he has already given.

Int. 4. At the time of her loss was she considered, or not, a sound and substantial boat; what facts are you able to state on this subject, going to shew whether she was in sound condition and order at the time of her loss, or not?

Answers. That he never examined the boat himself, and can, therefore, give no direct evidence as to her value; but that her general reputation was, that she was neither sound nor substantial.

Int. 5. How many years are steamboats generally considered capable of constant use before being deemed old and unsafe?

Answers. That after four or five years' constant use, steamboats are deemed old and unsafe.

Int. 6. At what amount would you estimate the tackle, apparel, and furniture of the steamer Buckeye at the time of her loss? Do you know pretty well what it consisted of?

Answers. States that he is not sufficiently well acquainted with the tackle, apparel, and furniture of the Buckeye to answer the interrogatory.

Int. 7. Are you able to form an opinion of the value of her provisions for the voyage between New Orleans and Monroe, in the Ouachita, at the time she was lost; and what would you estimate it at? Please state how you form the estimate, and what have been your opportunities of judging of such matters.

Answers. That he is able to form an opinion of the value of the provisions on the Buckeye for her voyage between New Orleans and Monroe, on the Ouachita at the time she was lost, and that he values it at about one hundred dollars. States that, having been clerk upon several boats, and upon one boat in that trade, and it being his duty to lay in the stock of provisions for the trip, he makes the estimate as above given of the value of the Buckeye's provisions.

Int. 8. Are you acquainted with Captain Reed, one of the respondents in this case? How long has he been a captain in the steamboat business on the river Mississippi; and what has his character always been for skill, ability, experience, and prudence in that capacity?

Answers. That he is well acquainted with Captain Reed; that he has known him for five or six years. Does not know how long he has been a captain in the steamboat business on the Mississippi. When witness first knew him, he commanded the John Linton, and continued on her for about two years; that during the time witness has known Captain Reed, he has always borne a high character for skill, ability, experience, and prudence as a captain.

Cross-interrogatories.

Int. 1. If you state anything about the soundness or unsoundness of the steamer Buckeye, please state your means of information. Did you ever go on board the said vessel for the purpose of ascertaining her condition? If, when, where, and who was with you, and who present?

In answer to this interrogatory, witness states, that he never went on board the steamer Buckeye for the purpose of ascertaining her condition.

Int. 2. Did you ever go into the hold of said vessel for the purpose of examining the hull? If yea, state when, where, and who was present.

Answers. That he never did.

Int. 3. Did you ever examine the timbers of the hull, with chisel or pickaxe, to ascertain their condition? If yea, when, where, and who was present? What was the result of your examination?

Answers. That he never examined her timbers at all.

Int. 4. If you state that you are acquainted with the value of steamboats, please state what would be the cost of building, furnishing, equipping, and putting in running order, a vessel of the size and appointments of the Buckeye.

Answers. That the equipping of a boat of the size and appointments of the Buckeye would cost about twelve thousand dollars.

Int. 5. Is, or is not, a steamboat, engaged in a profitable trade, of much more value to the owner than to any one else? Is not this the case generally? Is it not very difficult to sell steamboats for their real value, as compared with their costs? Do not boats generally sell for much less than their value at forced sales? Do you know how much was spent by Captain Caldwell for the repairs of the Buckeye?

Answers. That a steamboat, engaged in a profitable trade, is of much more value to the owner than to any one else, and he believes this to be the case generally; that it is difficult to sell steamboats for their value in comparison with their cost; and that, at forced or sheriff sales, boats are generally sold for much less than their value. Witness does not know what repairs were put upon the Buckeye by Captain Caldwell.

Additional interrogatory by respondents to the witness. Did you ever hear libellant, Mr. Smith, make any declaration on the subject of this suit since it has been instituted; and what are they, and when made?

To this interrogatory witness answers, that Mr. Smith was on board the Fort Towson soon after the institution of the present suit, when he observed, in the presence of witness and several other persons, that it was very foolish in Capt. Caldwell's bringing the suit.

Signed, JOHN A. STEVENSON.

Sworn to and subscribed before me, this 7th of June, 1844.

Signed, N. R. JENNINGS, *Comm'r.*

John G. Bell, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Interrogatories the same as above.

Answers to—

Int. I. That he has had considerable experience in the business of steamboats, and that he has a tolerable correct knowledge of their value, having served, in various capacities, for ten years on steamboat's business.

II. Answers. That he knows the Buckeye, and considers himself capable of making a pretty correct estimate of her value.

III. Answers. That he does not know how long the Buckeye had been running previous to her being lost; that he does not know where she was built, but thinks that she came out in the winter either of '35 or the spring of '36; witness cannot remember which; and, at the time of her being lost, witness thinks her value to be about 1,200 dollars.

IV. Witness states that, from general report, the Buckeye was not considered a sound and substantial boat; that, upon her last trip before she was sunk, witness went on board of her, and, from a partial survey of her, he perceived that she was decayed in sundry places in her upper works.

V. Witness answers that it would depend very much upon the materials in building steamboats; that some do not last more than three years, others four or five, and some as long as six or seven years, when well taken care of; but that, upon an average, western boats, with constant use, would not last more than four or five years, unless they are repaired generally as to the hull.

VI. Answers. That he considers the tackle, apparel, and furniture of a steamboat, of the class and age of the Buckeye, to be worth about three or four hundred dollars, estimating the articles that such steamboats should have.

VII. Answers. That he has had considerable experience in the matter of furnishing and providing provisions for steamboats; that, upon the last trip of the Buckeye, he was on board, and saw an unusual number of passengers, who had taken passage on her, and a more than ordinary supply was required, which he would estimate at about one hundred and fifty dollars.

VIII. Answers. That he is well acquainted with Capt. Reed; that he has known him for five or six years, or perhaps longer, as captain of steamboats in the river Mississippi, and that his standing as a captain has been most unexceptionable. His skill and prudence have never been doubted.

Cross-interrogatories.

Answers to—

Int. I. That he never went on board the Buckeye for the purpose of ascertaining her condition, and that his only means of information, except what has been stated in an answer previously given, have been from general reports.

II. Answers. That he never went into her hold at all.

III. Answers. That he never examined her timbers in any way.

IV. Answers. That he thinks a boat of the class of the Buckeye would cost about 12 or 13 thousand dollars to build, furnish, and equip her.

V. To the three first questions in this interrogatory, witness answers in the affirmative; that he does not know how much Capt. Caldwell expended in the repairs of the Buckeye, or that he repaired her at all.

Special cross-interrogatory to James G. Bell. Were you or not the owner of the Bayou Sara at the time she was burnt, in 1839 or 1840? Where was she burnt? Was she running or not at the time? How old was the said vessel at the time she was burnt? For how much was she insured at the time? Was the insurance money paid to you? If you were not the owner of the Bayou Sara at the time she was burnt, had not the policy been transferred to you to secure the price for which you sold her? Did you not receive the money on the policy? If you had sold the Bayou Sara, for what price did you sell her?

Answers. That he was not the owner of the Bayou Sara at the time she was burnt; and to the rest of the questions contained in the interrogatory witness declines answering, stating that the information therein asked, in relation to the Bayou Sara and the suit for insurance, is a matter of record in the courts of the city of New Orleans; that the other questions relate solely to his private affairs.

Signed, JAMES G. BELL.

Sworn to and subscribed before me, this 7th June, 1844.

Signed, N. R. JENNINGS, *Clerk, &c.*

THURSDAY, *June* 13*th*, 1844.

Andrew William Tufts, for respondents, being duly sworn to answer the interrogatories propounded to him, deposes as follows:

Interrogatories the same as those propounded to John A. Stevenson and James G. Bell.

Int. 1. Answers. That he is well acquainted with the business of steamboats, and that he has a pretty correct knowledge of their value;

and that he has acquired his knowledge from being engaged in the business of steamboating for the last twelve years.

2. Answers. That he knows the steamboat Buckeye, and that he is able to give an opinion respecting her value.

3. Answers. That she had been running nearly six years, or quite, previous to her being lost; that she was built in Cincinnati, either in the year '36 or '37, and that when she was lost witness does not think she was worth over two thousand dollars.

4. Answers. That, in his opinion, she was neither a sound or substantial boat at the time of her loss, but witness states that he knows of no facts that he could mention.

5. Answers. That public opinion is, that boats are not considered safe and sound after five years constant use; but in his, witness', opinion, boats, if properly taken care of, and well salted, would last from eight to ten years.

6. That he has no knowledge of what her tackle, apparel, and furniture, consisted of, and therefore cannot estimate its value.

7. Answers. That he is able to form an opinion of the value of the provisions of the Buckeye for the voyage between New Orleans and Monroe, in the Ouachita, and that he estimates it to be from 75 to 80 dollars. States that he forms this estimate from having run several boats on the Mississippi river, and that he himself always laid in the stock of provisions necessary for the voyage.

8. Answers. That he is acquainted with Captain Reed, but does not know how long he has been a steamboat captain on the Mississippi river; and that he has never heard anything against Captain Reed's character for skill, ability, prudence, and experience in that capacity.

Special interrogatory to Capt. Tufts. Will please state whether, on the arrival of the De Soto in port, directly after the collision with the Buckeye, he made an examination of the stern and bow of the De Soto, with a view to ascertain whether she was injured in any manner by the collision; and, if yea, will please state the result of his examination, and the impression made on him as to the degree of violence of the collision.

Answers. That about 24 hours after the arrival of the De Soto, after her collision with the Buckeye, he made an examination of the stern and bow of the De Soto, with a view of ascertaining whether she was injured in any manner by the collision, and that he perceived no marks of injury upon the De Soto; and the impression made upon his mind, from her appearance, was, she could not have had any collision with any boat.

Cross-interrogatories.

1, 2, 3. Answers the first, second, and third cross-interrogatories, by stating, that he never went on board the Buckeye for the purpose of ascertaining the soundness of her condition; that he never went into her hold, and never examined her timbers with either chisel or pickaxe.

4. Answers. That the cost would be from 14 to 16 thousand dollars.

5. Answers. That a steamboat engaged in a profitable trade is of much more value to the owners than to any one else, and that this is the case generally. That it is very difficult to sell steamboats for their value in comparison with their costs. That at forced sales witness has known boats to sell greatly beneath their value, and for about one-tenth of their cost. Witness does not know how much was spent by Captain Caldwell for the repairs of the Buckeye.

Special cross-interrogatory to Capt. Tufts. You will please state particularly the marks of the collision on the De Soto. Was the De Soto heavily laden or not at the time you examined her?

Answers. That he could see no marks of the collision on the De Soto, except a slight scratch on her larboard bow, commencing six or eight feet from her stem, and extending back about twenty feet; and that she was light when witness saw her.

Signed, A. W. TUFTS.

Sworn to and subscribed before me, this 13th June, 1844.

Signed, N. R. JENNINGS, *Clerk*

Testimony taken before the Legislature, and filed as evidence.

May 7th, 1844.

Personally appeared before me, O. P. Jackson, associate judge of the city court of New Orleans, State of Louisiana, Jeremiah Powell, Wm. Gaunt, P. C. Shannon, Geo. H. Caldwell, Joseph Martin, John Droun, Wm. H. H. Droun, Louis Rhodes, Benjamin Mathin, Samuel L. Cay, James A. Niggs, Jas. Lovett, and Austin P. Henning, who were duly sworn upon the Holy Evangelist to tell the truth, the whole truth, and nothing but the truth, in answer to the interrogatories to be propounded at an investigation to be had by a committee appointed by the honorable the Senate of Louisiana for that purpose, of the circumstances of the collision on the 15th instant, between the Buckeye and the De Soto steamers.

Signed,

J. POWELL,
P. C. SHANNON,
WM. GAUNT,
GEO. H. CALDWELL,
JOHN DROUN,
WM. H. H. DROUN,
his
LOUIS ✕ RHODES,
mark.
BENJAMIN MATHIN,
JAMES A. NIGGS,
AUSTIN P. HENNING,
JOSEPH MARTIN,
SAMUEL L. CAYES,
his
JAMES ✕ LOVETT,
mark.

and that he has acquired his knowledge from being engaged in the business of steamboating for the last twelve years.

2. Answers. That he knows the steamboat Buckeye, and that he is able to give an opinion respecting her value.

3. Answers. That she had been running nearly six years, or quite, previous to her being lost; that she was built in Cincinnati, either in the year '36 or '37, and that when she was lost witness does not think she was worth over two thousand dollars.

4. Answers. That, in his opinion, she was neither a sound or substantial boat at the time of her loss, but witness states that he knows of no facts that he could mention.

5. Answers. That public opinion is, that boats are not considered safe and sound after five years constant use; but in his, witness', opinion, boats, if properly taken care of, and well salted, would last from eight to ten years.

6. That he has no knowledge of what her tackle, apparel, and furniture, consisted of, and therefore cannot estimate its value.

7. Answers. That he is able to form an opinion of the value of the provisions of the Buckeye for the voyage between New Orleans and Monroe, in the Ouachita, and that he estimates it to be from 75 to 80 dollars. States that he forms this estimate from having run several boats on the Mississippi river, and that he himself always laid in the stock of provisions necessary for the voyage.

8. Answers. That he is acquainted with Captain Reed, but does not know how long he has been a steamboat captain on the Mississippi river; and that he has never heard anything against Captain Reed's character for skill, ability, prudence, and experience in that capacity.

Special interrogatory to Capt. Tufts. Will please state whether, on the arrival of the De Soto in port, directly after the collision with the Buckeye, he made an examination of the stern and bow of the De Soto, with a view to ascertain whether she was injured in any manner by the collision; and, if yea, will please state the result of his examination, and the impression made on him as to the degree of violence of the collision.

Answers. That about 24 hours after the arrival of the De Soto, after her collision with the Buckeye, he made an examination of the stern and bow of the De Soto, with a view of ascertaining whether she was injured in any manner by the collision, and that he perceived no marks of injury upon the De Soto; and the impression made upon his mind, from her appearance, was, she could not have had any collision with any boat.

Cross-interrogatories.

1, 2, 3. Answers the first, second, and third cross-interrogatories, by stating, that he never went on board the Buckeye for the purpose of ascertaining the soundness of her condition; that he never went into her hold, and never examined her timbers with either chisel or pickaxe.

4. Answers. That the cost would be from 14 to 16 thousand dollars.

5. Answers. That a steamboat engaged in a profitable trade is of much more value to the owners than to any one else, and that this is the case generally. That it is very difficult to sell steamboats for their value in comparison with their costs. That at forced sales witness has known boats to sell greatly beneath their value, and for about one-tenth of their cost. Witness does not know how much was spent by Captain Caldwell for the repairs of the Buckeye.

Special cross-interrogatory to Capt. Tufts. You will please state particularly the marks of the collision on the De Soto. Was the De Soto heavily laden or not at the time you examined her?

Answers. That he could see no marks of the collision on the De Soto, except a slight scratch on her larboard bow, commencing six or eight feet from her stem, and extending back about twenty feet; and that she was light when witness saw her.

Signed, A. W. TUFTS.

Sworn to and subscribed before me, this 13th June, 1844.

Signed, N. R. JENNINGS, *Clerk*

Testimony taken before the Legislature, and filed as evidence.

May 7th, 1844.

Personally appeared before me, O. P. Jackson, associate judge of the city court of New Orleans, State of Louisiana, Jeremiah Powell, Wm. Gaunt, P. C. Shannon, Geo. H. Caldwell, Joseph Martin, John Droun, Wm. H. H. Droun, Louis Rhodes, Benjamin Mathin, Samuel L. Cay, James A. Niggs, Jas. Lovett, and Austin P. Henning, who were duly sworn upon the Holy Evangelist to tell the truth, the whole truth, and nothing but the truth, in answer to the interrogatories to be propounded at an investigation to be had by a committee appointed by the honorable the Senate of Louisiana for that purpose, of the circumstances of the collision on the 15th instant, between the Buckeye and the De Soto steamers.

Signed,

J. POWELL,
P. C. SHANNON,
WM. GAUNT,
GEO. H. CALDWELL,
JOHN DROUN,
WM. H. H. DROUN,
his
LOUIS ⋈ RHODES,
mark.
BENJAMIN MATHIN,
JAMES A. NIGGS,
AUSTIN P. HENNING,
JOSEPH MARTIN,
SAMUEL L. CAYES,
his
JAMES ⋈ LOVETT,
mark.

Sworn to and subscribed before me, this 5th March.
Signed, O. P. JACKSON, *Ass'te Judge.*

Investigation of the collision between Buckeye and De Soto, Senate Chamber, 5th March, 1844.

25 *March, 7 o'clock, P. M.*

Present: Messrs. Sparrow and Downs, of the Senate, and Judge Ogden, of the House; upon no other members of the judiciary committee appointed by each house appearing, they proceeded to take testimony; previous to which was read the protest of the officers and captain of the Buckeye, which was offered as evidence in the above examination, marked exhibit "A."

J. Powell, being duly sworn, deposeth: Examined the De Soto today; the stem was evidently sprung from 3 to 3½ feet, from what cause does not know; shows no other evidence of any collision; did not see any other marks on the bow of the boat; would judge that it required some violence to have caused the stem of the boat to have been thus sprung. The injury had the appearance of being recently done. Has been connected with building boats for the last 12 years; says that he thinks, when asked if a boat could be considered safe to run with her stem thus sprung, a delicate question. Does not wish to censure any party concerned, but thinks that there is great wrong somewhere; does not think that boats ought to come together in any case. Has been eight or nine years running boats, and has never met a collision, except in a fog, once with the Monarch. Saw recent repairs on the bow of the De Soto, from all appearances, which appears to have been done since she came into port this last time—as caulking and puttying; saw no other marks but those presented on the bow.

Questions propounded by the committee—answer in the affirmative:

Would it not be desirable to subject all captains, pilots, and engineers of steamboats to a strict examination, as to their experience and capacity, before permitting them to act as officers for steamboats; is it not true, that collisions and explosions of steamboats are, in the great majority of cases, owing to the want of skill or the carelessness of some of the officers?

To each of these questions the witness answers, deliberately, and as the result of much observation and reflection, in the affirmative. He also adds, that his experience convinces him that accidents ought never to occur, with the exercise of proper prudence, and with suitable skill and knowledge on the part of the officers. Boats descending do not comply with the law requiring them to stop in meeting an ascending boat, unless in danger of a collision, in which case it is usual for both boats to stop. There is no difference, he thinks, in the danger of a low or high-pressure engine, as regards safety.

Pat. C. Shannon, being sworn, concurs with Mr. Powell, that the stem of the De Soto was sprung fully from 3 to 3½ feet. The chocks between the beams were started; that the injury required considerable violence, and thinks it was recently done; saw that the paint on the star-

board side of the De Soto was very slightly scratched, from the bow 10 or 15 feet, in different places.

William Gaunt states that the plank of the De Soto was sprung half an inch from the stem of the starboard side, from the forecastle deck downwards, 2½ to 3 feet; that the stem appeared to be cracked or split 2½ feet on the starboard side; judges that something had split the stem to cause the plank to part from it; required considerable violence to have split the stem, and the injury appeared to be recent.

Thomas C. Kellam, being sworn; passenger on the Buckeye; collision occurred about 3 or 4 o'clock in the morning; was awakened by the collision; made his escape to the hurricane deck of the Buckeye; on the boats nearing, step'd off on the De Soto; the stern of the De Soto was swinging round to the stern of the Buckeye, or rather that both sterns were swinging together. When they swung together both bows of the boats were heading up the river. The De Soto was on the starboard side of the Buckeye. The night was pretty clear; could see very distinctly; as he run out on the hurricane deck, looked out on the water, did not see any land, but, from what he saw afterwards, saw that the boats were heading up stream; thinks they did not change their position.

David McGuire, sworn; was pilot on board the De Soto, at the wheel at the time of the collision took place with the Buckeye. Left Barrow's wood yard at 3 A. M., ran by the way of Atchafalaya, on the lower side of the island; about four miles above he first saw a light, supposed it might be a raft or a flat boat, but, on approaching nearer, discovered that the light did not stand still; it settled along the island shore, until he saw it abaft the larboard chimney; it then went out of his view a short time; he wished to see where it was, and step'd on the starboard side of the De Soto, and leaned forward and saw the light standing, as he thought, right for him; then discerned that it was a steamboat, and could see her plain. Asked the mate if that boat was not standing right for us; he said she was, and that I had better stop her; he stopped, and immediately rang the backing bells; then she backed, and continued doing so until the collision; thinks she made 6 or 7 revolutions, with both engines, before they struck, which led him to believe that the De Soto had stern way on her. Thinks, when they came together, he stopped the larboard engine, and backed slow on the starboard, which brought them round along side of each other, with their heads up stream; stopped backing, and rung the bell to go ahead, and spoke to the engineer, through the trumpet, to go slow; by this time the Buckeye had sunk; moved her ahead slow, until he got a line made fast to the Buckeye, and then stopped. Hollowed to them all to get on the hurricane deck of the Buckeye, as the cabin would float, as they were in deep water. We then rigged a stage across, and got the passengers off the hurricane deck, and remained there until about an hour's sun, when the Southwestern came along side. The Southwestern ran up between us and the willow bar on our larboard side; Captain Reed hollowed to them to work their engines slow, and not to make any swell; she round-

ed in, and made fast to the De Soto. I hollowed to them to come in very slow, as he was fearful they would pull the stancheon out, that they had made fast to along side. Thinks, *at time*, both remained as near where the collision took place as possible. The Southwestern moved round to our bows to rig a stage, and took some ploughs and stuff off the hurricane deck of the Buckeye. While the Southwestern laid there, there was a horse raised with a stancheon, which induced him to believe it came directly from the hull of the Buckeye, which was about not more than two rods from where we laid. It had been a perfect calm until this time; there was a breeze sprung up from the main land, which gradually moved us over towards the island; we backed slowly on one of the engines, so as not to carry any thing away, and then we reached the island shore, and there landed the cabin of the Buckeye. At a little after daylight the mate sounded with a six fathom line, and got no soundings, where I supposed the hull of the Buckeye to lay. It is my opinion the hull lays in 50 feet water. When the boats neared together, saw no person on the hurricane deck of the Buckeye. The alarm bell was rung and answered by the other boat. It is 8 or 9 miles from Barrow's landing to the mouth of Red river. The boats struck at an angle of 45 degrees, or about it; the De Soto going as directly for the foot of the pass as he could hold her, and the other boat crossing her at an angle of about 45 degrees, the De Soto's stem entering about 5 or 6 feet on the starboard side of the Buckeye's stem; says he did not make any change of the De Soto, so as to glance from the Buckeye, for the reason that before he stopped the engine he calculated she, (the Buckeye,) would straighten up; in that case, if I had steered off, we must inevitably *had* come together. He expected her to straighten up on the island side, and before she came into the line on which he was running. He calculates he was five or four lengths from the Buckeye when he stopped the engine; he rang the alarm bell a little before that. The alarm bell of the Buckeye and De Soto were rung nearly about the same time, which was just about the time the engine was stopped.

William H. H. Drown, the engineer of the Buckeye, was on watch at the time of the collision. The bell rung to stop her and to back; supposed she had made some two or three revolutions back before she struck; they rung the bell to stop after they had struck, and then to go ahead again, and then hollowed through the trumpet to let her stand as she was. Did not know what it was, whether a boat run into them or not; the fireman came back and said that a boat had run into them, and said they would sink; told them to go call his partner, and he came out. I went forward and found she was in a sinking condition. I should think, by the break in the side, that the boat struck us half way between the forhead hatch and jack staff, on the starboard side. Went back and went on the hurricane deck, to the stern of the boat. The collision was about at an angle of 45 degs. The first soundings that were taken were under 5 fathoms, at the place where I supposed the cabin was still fast to the Buckeye.

District court of the United States for the eastern district of Louisiana.

To any justice of the peace in the parish of Concordia, or any commissioner authorized to take depositions:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you George McWhorter, D. S. Stacy, Edward Sparrow, Alexander Hunter, and P. Alexander, and them duly examine on oath, touching and concerning certain matters and things in a cause now depending in the said court, wherein George H. Caldwell, master and owner of the steamer Buckeye and others, are plaintiff and libellant, and Kimball, Reed and others, master and owners of the steamer De Soto, are respondents and defendants. And the same examinations, so taken and reduced to writing, you certify, under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Theo. H. McCaleb, judge of said court, at the city of New Orleans, this 30th day of April, A. D. 1844, and the 68th year of the independence of the United States of America.

Signed, N. R. JENNINGS, *Clerk*.

Interrogatories to be propounded to the Hon. George McWhorter, parish judge of Concordia, D. S. Stacy, esq., General E. Sparrow, Alexander Hunter, esq., S. Alexander, and others, witnesses living in the parish of Concordia.

1st. What is your occupation; how long have you resided in the parish of Concordia?

2d. Do you know Benjamin F. Glasscock, a resident of your parish; if yea, how long have you known him?

3d. What is his reputation and character for truth and veracity; and, according to that reputation, and your own knowledge of him, how far is his testimony, as a witness in a court of justice, entitled to belief?

The counsel for the libellants except to the foregoing interrogatories as illegal and improper.

Cross-interrogatories.

1st. Is not Mr. Glasscock in the habit of romancing, or, in other words, telling extravagant tales?

2d. Is he not in the habit of making exaggerated statements, and frequently making himself the hero of his story?

3d. Do you not know that, in a suit in Concordia, his own counsel called in witnesses to prove his habit of talking at random, in order to get him free from liabilities incurred by his own statements. State all you know or have heard on this subject, what was the cause, who was his counsel, and whether he succeeded in establishing his own want of credibility.

GEORGE H. CALDWELL & JAMES SMITH,
vs.
THE OWNERS OF THE STEAMBOAT DE SOTO.

Edward Sparrow, a witness in the above entitled cause, being duly sworn—

To 1st interrogatory witness answers: That he is now a practising attorney in the parish of Concordia, and has been since June, 1841; and had been previous to that time, for many years, sheriff of the parish of Concordia, and has resided permanently in the parish of Concordia since October, 1830.

To 2d interrogatory witness answers: That he has known Benjamin F. Glasscock since about 1832, and has known him intimately for several years back.

To 3d interrogatory witness answers: That his reputation and character for truth and veracity is good, and that he would place implicit confidence in the truth of anything that he might state under oath, as a witness.

Cross-interrogatories.

To 1st interrogatory witness answers: That Mr. Glasscock is in the habit of quizzing a great deal, and in doing so will tell the most ridiculous and amusing stories, and that he does not tell extravagant stories or tales to seriously deceive or impose upon those he tells them to.

To 2d cross-interrogatory witness answers: That Mr. Glasscock does make extravagant statements in the manner stated in the answer to the first interrogatory.

To 3d cross-interrogatory witness answers: That in a suit in the Concordia district court, the counsel for the party opposed to Mr. Glasscock were endeavoring to make an impression adverse to his interests, in consequence of a remark which was proved to have been made by Mr. Glasscock, and Glasscock's counsel to remove that impression called in witnesses to prove the expression was a cant expression, or bye-word with Glasscock, and had nothing to do with the matter in controversy. Glasscock's counsel were Stacy and Sparrow. The suit in which this occurred was styled Benjamin F. Glasscock vs. George W. Greene and wife; and also the suit of George W Greene vs. Benjamin F. Glasscock, which two suits were on trial cumulated. Glasscock did not succeed in establishing his own want of credibility; no such attempt was made, or thought of by his counsel, and it would have been impossible, as witness believes, to have found evidence in the parish of Concordia, where witness believes he, Glasscock, was born, and has always lived, to have destroyed his reputation as a man of veracity.

Signed, EDWARD SPARROW.

Sworn to and subscribed before me, this 7th day of May, A. D. 1844.

Signed, THOMAS EDWARDS.
Justice of the peace.

A. C. Hunter, being next sworn—

To 1st interrogatory witness answers: That he is sheriff of the parish

of Concordia, and has been since June, 1840, and has resided in said parish for the last 7 years.

To 2d interrogatory witness answers: That he knows B. F. Glasscock, and has known him ever since his, witness', residence here.

To 3d interrogatory witness answers: That his reputation for truth and veracity is excellent, and his evidence in a court of justice is unbounded for truth and veracity.

Cross-interrogatories.

To 1st cross-interrogatory witness answers: That Mr. Glasscock is in the habit of quizzing, but witness never knew him to be guilty of deliberate falsehood to the prejudice of any one.

To 2d cross-interrogatory witness answers: That Mr. Glasscock does tell extravagant stories, and it is generally understood that they are for the purpose of exciting laughter, and not calculated to do injury.

To 3d cross-interrogatory witness answers: That Messrs. Stacy and Sparrow were his counsel in some suits, in the Concordia district court, wherein George W. Green and wife were of one party, and B. F. Glasscock the other; does not know anything in relation to the circumstance referred to in cross-interrogatory 3d, but believes that witnesses could not be found in the parish of Concordia to impeach any evidence of Glasscock, given in a court of justice; and further this deponent saith not. Signed, A. C. HUNTER.

Sworn to and subscribed before me, this 7th day of May, A. D. 1844.
Signed, THOS. EDWARDS, *J. P.*

George C. McWhorter, being next sworn—

To 1st interrogatory witness answers: That he is the parish judge of the parish of Concordia, and has lived in said parish since September, 1835 or 1836.

To 2d interrogatory witness answers: That he has known Benjamin F. Glasscock ever since he came to the parish, and for the last four years has known him intimately.

To 3d interrogatory witness answers: That he would place implicit confidence in any statement Mr. Glasscock would make in a court of justice.

Cross-interrogatories.

To 1st cross-interrogatory witness answers: That Mr. Glasscock is in the habit of quizzing a great deal.

To 2d cross-interrogatory witness answers: That Mr. Glasscock is in the habit of making exaggerated statements that are innocent in their tendencies, and not intended or calculated to injure any one; for instance, were he to tell me seriously that some one was working six alligators in his cotton gin, I would know at once that this was one of his extravagant stories, and that is a fair sample of any extravagance that he is guilty of; but any statement that Mr. Glasscock would make in a court of justice, I would believe in as implicitly as statements made by any other man.

To 3d interrogatory witness answers: That he knows nothing of the matters alluded to in the third cross-interrogatory; and further this deponent saith not.

Signed, GEO. C. McWHORTER.

Sworn to and subscribed before me, this 7th day of May, A. D. 1844.
Signed, THOS EDWARDS,
Justice of the peace.

State of Louisiana, parish of Concordia:

By virtue of the annexed commission I have caused to come before me, at my office in the town of Vidalia, on the 7th day of May, A. D. 1844, Edward Sparrow, Alexander C. Hunter, and George C. McWhorter, witnesses in a certain cause now pending in the U. S. district court for the eastern district of Louisiana, wherein George H. Caldwell and James Smith are plaintiffs, and the owners of the steamboat De Soto are defendants; and the said witnesses were duly sworn to tell the truth to the questions propounded to them in the said cause; and their answers were reduced to writing by me in their presence, and subscribed by them respectively in my presence.

In witness whereof I have hereunto subscribed my name, this 7th day of May, A. D. 1844.
Signed THOMAS EDWARDS,
Justice of the peace.

OWNERS OF THE BUCKEYE,
vs.
OWNERS OF THE DE SOTO.

Testimony of George T. Dunbar, civil engineer, who is to write out himself his answers to the following interrogatories and cross-interrogatories, and swear to the truth of his written answers before any judge, justice, or commissioner; all objections of form waived.

Int. 1st. Are you not scientifically and practically an engineer by profession, and have you not been engineer of the State of Louisiana?

Answers. I am, and have been engineer of the State of Louisiana, and of the board of public works of Louisiana.

Int. 2. Did you or not survey the outlet from Old river, on both sides of Red river island, in the fall of 1838? Did you or not also survey the mouth of the Atchafalaya, the same fall?

Answers. I made an examination of the mouths of the cut-off and of the Atchafalaya, in the latter part of 1838; also in January and February, 1839; and in the fall of 1839 and 1842.

Int. 3d. Did the bar at this time extend across Old river on the lower side of Red river island; and if so, how high was it at that time above the level of the Mississippi river?

Answers. At the time of my examination, 18th of January, 1839, there was 18 inches water over the bar at the lower mouth, with a current of about two miles per hour into the Mississippi. This bar in the fall of 1839 was entirely out of water.

Int. 4. What water was there at this time on the bar on the upper side of Red river island, at the outlet into the Missisippi?

Answers. On the 18th January, 1839, there was over the bar in the upper mouth ten feet water.

Int. 5th. Did you or not measure the depth of water in the mouth of

the Atchafalaya about the same time; and what was the depth; at what rate was the current down; and what was the fall from the mouth down to tide water, (or to what is so called?)

Answers. I measured the depth of the Atchafalaya at the same time, and found five and a half feet water. The current was running at about 3½ miles per hour. I do not know the fall to tide water.

Int. 6. Did you not survey the outlet from Old river into the Mississippi, in the fall of 1842?

Answers. I did survey the outlet in the fall of 1842.

Int. 7. How high was the bar at this time across Old river, or how much was it above the level of the Mississippi, on the lower side of the island?

Answers. The bar across the lower mouth, in November, 1842, was, in its lowest part, about twelve feet above the water in the Mississippi.

Int. 8. Was the Mississippi, at the time you made this survey, down to low water mark; if not, how much did it lack of being so?

Answers. The Mississippi, at this time, (Nov., 1842,) was two feet above the low water of October, (1838.)

Int. 9. What depth of water was there on the bar on the upper side of Red river island, in the outlet to the Mississippi, when you made the survey?

Answers. There was scant two feet on the crest of the bar, in the upper mouth, in November, 1842.

Int. 10. What was the fall from the upper end of that bar in Old river, through the outlet into the Mississippi, and how many miles per hour did the current run through this outlet?

Answers. The fall, from the crest of the bar to the Mississippi river was, in November, 1842, fourteen and a half inches, ten inches occurring in the first quarter of a mile, giving a current (average) of five and a half miles per hour. Immediately at the foot of the bar the current ran at the rate of six miles per hour.

Int. 11. Were you or not encamped, in the fall of 1842, on the bar at the outer end of Red river island, and how much time have you spent (at various times) at that place?

Answers. I was encamped at the end of the island, in the fall of 1842; also in 1839. I have, during my different examinations, spent about two months at various times on the island, and at the mouth (proper) of Red river.

Int. 12. If there had been any daily rise and fall, or ebb and flow, of the waters of the Mississippi, or Old river, or the Atchafalaya, should you or not have discovered it while making the survey and leveling of those waters?

Answers. I should most unquestionably have observed any change in the water, as I had marks placed in the water for that purpose, which were examined at various times during the day, and often at night. There was no rising and falling of the water, except the momentary rises and depressions to which all rapid currents are subject.

Int. 13. Do you believe it possible that either of those rivers, the

Mississippi, the Atchafalaya, or Old river, on either side of Red river island, can be affected by any tide from the Gulf of Mexico?

Answers. I do not believe it possible that either the Mississippi, the Atchafalaya, or Old river island, can be affected by any tide from the Gulf of Mexico.

Int. 14. Does your experience, both scientifically and practically, as an engineer, teach you that it is possible or impossible to have a daily tide in Old river, or any other tide that does not come down the Mississippi or Red river in a natural way, as a common rise or flood of water?

Answers. My experience, both scientifically and practically, teaches me, that it is not possible to have a daily tide in Old river, and I arrive at this conclusion from knowing that the Mississippi, at the mouth of Old river, is full nine feet above the Gulf of Mexico, at dead low water mark; and that, at the same stage in 1842, there would have been a fall, in one quarter of a mile from the bar in the upper mouth towards the river, of thirty-four inches, or from 14 to 18 inches more than the tide rises in the Gulf. This being the case, if the water in Old river could be affected by the tide, the same tide could affect the water above the Falls of St. Anthony. I arrive at the difference of water between the Gulf and the mouth of Red river, from the levels which have been taken by different persons on various parts of the Mississippi. Col. Crozet shows the fall from Plaquemine to be $1\frac{1}{2}$ or 2 feet, and my own levels around the Raccourci Bend give me the average fall in that section of the stream.

Int. 15. How much had the channel of the Atchafalaya deepened from the fall of 1838 to the fall of 1842?

Answers. The channel of the Atchafalaya, from 1838 to Nov., 1842, deepened three and a half feet.

Int. 16. At what rate yearly is the increase on the bar at the outer end of Red river island?

Answers. During January, 1839, there was 18 inches on the bar in the lower mouth of the cut-off; in November, 1839, it was $2\frac{1}{2}$ feet out of water; and in November, 1842, it was twelve feet, in the lowest part, above the level of the Mississippi river, showing an increase in the lowest part, from November, 1839, to November, 1842, of eight and a half feet, the water of 1842 being $3\frac{1}{2}$ feet lower than in 1839. There was an increase of deposit on the bar in the upper mouth, during the same period, of two feet.

Int. 17. Should the Mississippi, this coming fall, go down to its lowest water mark, will there or not be a bar entirely across the outlet from Old river, shutting it off from the Mississippi; and how high will that bar be above the level of the Mississippi river? State how you form said opinion.

Answers. Unless, by some unlooked for aid, the channel over the bar in the upper mouth is deepened, and we should have this fall the water as low as it was in 1838, Red river will be shut out entirely from the Mississippi, and a barrier formed from three to four feet above the level of the Mississippi river. In November, 1842, the bar in the up-

per mouth was actually 14 inches above the water of 1838; the section of the Atchafalaya is every day rapidly increasing, and, as it increases, the bar in the upper mouth will continue to form more rapidly, from the simple fact that a greater outlet is opened in the Atchafalaya for the water, and less resisting force, in consequence, opposed to the action of the Mississippi in forming the bar.

Int. 18. When you made the survey, in the fall of 1842, what rise would it have taken in the Mississippi to have affected Old river on the upper side of the island; and how much to have affected it all the way round the island?

Answers. In 1842, (Nov.,) a rise of 14 inches in the Mississippi, would have produced nearly slack water all round the island, and would have affected the water in Old river, at the lower mouth, to a corresponding height.

Int. 19. Is or is not Old river, on the lower side of Red river island, a pond or lake of stagnant water for three or four, or more months in each year?

Answers. The portion of Old river between the Atchafalaya is a pond of still water, where the water is fourteen feet above the low water of 1838; at this point, in (1842,) it would commence to receive the water of the Mississippi and Red river; for four or five months in the year, it is free from current and has no outlet.

Signed, GEORGE T. DUNBAR.

Sworn to and subscribed before me, this 15th May, 1844.

Signed, J. BALDWIN,

Recorder of Municipality No. 2, of city of New Orleans.

Cross-interrogatories to George T. Dunbar.

Int. 1. Did you ever make any observations for the especial purpose of ascertaining whether there was any effect by the ebbing and flowing of the tide on the water of the river Mississippi, or Old river, or the Atchafalaya, in the neighborhood of the mouth of Red river? If yea, state when, where, and what was the result of those observations, and how they were made.

Answers. I never made any observations on the water of the Mississippi, or Old river, or the Atchafalaya, in the neighborhood of the mouth of the Atchafalaya, for the especial purpose of noticing the effect of the tide at those points, as the idea of a tide at those points could never have presented itself to my mind; but I have made observations in regard to the water at those points, daily, for nearly three weeks, and observed no rise and fall, except the momentary rise and fall occasioned by a rapid and disturbed current.

Int. 2. Do you know about how much tide there is on the gulf at the mouth of the Mississippi river; and about how much there is on the gulf east and west of the mouths of the Mississippi; if yea, please state as nearly as you can.

Answers. The tide at the mouth of the Mississippi river rises from

sixteen to twenty inches; to the eastward, say one hundred miles, about 24 inches; and at the mouth of the Calcasieu it rises nearly 30 inches.

Int. 3. Is there not, at all seasons of the year, a connection of water from the bar at the lower mouth of Old river with the Mississippi river; is not this the case, even in low water; when Old river is cut off from the Mississippi at its lower mouth, has it not, still, connection with the Mississippi by means of its upper mouth; has not this been the case always, heretofore?

Answers. There is not, at all seasons of the year, a connection of water over the bar in the lower mouth of Old river with the Mississippi; on the contrary, the bar is, for several months, from eight to ten feet, in its lowest place, above the water of the Mississippi; it has always a connection by means of the upper mouth.

Int. 4. You will please state the fall of Old river, at its upper mouth, from your measurement; what is that fall at the usual stage of low water?

Answers. In 1842, (November,) the fall, from the crest of the bar to the Mississippi, (one mile,) was 14½ inches, ten inches of which was in the 1st quarter of a mile; the water was at its usual low stage.

Int. 5. Have you or not, as engineer for the State, made a map of Old river; was the large map which you have seen in the clerk's office of the district court of the United States, made by you; if it was not made by you, do you think it correct?

Answers. The plan was partly made by me, and partly by my assistant, Mr. Harrison; it was made under my supervision, and is correct.

Int. 6. At what stage of the water was that map intended to represent the river; was the bar, which was represented on that map, intended to represent what was out of the water at low water.

Answers. The plan represents the river at its usual low stage of water, (Nov., 1842,) and the bar laid down on the plan is intended to show that portion which was above water at the time of making the survey.

Int. 7. Was the map, from the mouth of the Atchafalaya to the Mississippi, made from actual measurement; was the width of the river ascertained by actual measurement; were the courses of the river taken from actual measurement, or observations?

Answers. The map, from the point of the island to the mouth of the Atchafalaya, (by way of Red river,) is constructed from actual survey and measurement; every part of this portion is strictly correct. The relative positions of the point of the island, at the mouths, and the mouth of the Atchafalaya, is correct, having been determined by the line of survey laid down on the map; that portion of the bed of the Old river, from the Atchafalaya to the lower mouth on the lower side of the island, is not laid down from survey, but from general observation; the outlines of the banks are nearly correct, having been taken from township plans, but the outline of the bar cannot be depended upon as correct.

Int. 8. Are there willows growing on the bar near the mouth of Old river; if yea, how far out on the bar do they grow?

Answers. There are willows growing on the bar, near the mouth of

Old river; those on the point opposite the point of the island, or in line nearly with the island and Bishop's place, are about 1800 feet from the island; the others, along Old river, I should think to be about a half to three-fourths of a mile from the island shore.

Int. 9. Are the tides on the gulf regular, or subject to irregularities?

Answers. The tides on the gulf are exceedingly irregular.

Signed, GEORGE T. DUNBAR.

Sworn to and subscribed before me, this 15th day of May, 1844.

Signed, J. BALDWIN,

Recorder of municipalty No. 2, of the city of New Orleans, and acting justice of the peace.

Testimony of certain witnesses taken before recorder Baldwin, and offered in evidence by respondents.—Filed June 7th, 1844.

Aaron Fontaine, witness introduced by defendant, being duly sworn, deposes and says:

He was passenger on board the steamboat De Soto when the collision took place between her and the Buckeye, on Friday, the 1st inst., in Old river. Witness had been up, off and on, all night, until a short time previous to the collision, when deponent went, a few minutes before the alarm bell, to his state room, B, and there went to and was in bed when the alarm bell was rung; the engine bell was rung, and the engine stopped; immediately after, another bell was rung, and the engine commenced to back, when deponent jumped out of his birth, and run forward on to the boiler deck, and then observed another boat within ten or fifteen feet aft. The De Soto, deponent believes, as near the middle of the river as possible to be, so near that deponent could not distinguish any difference. When deponent first saw them, the other boat which deponent observed, (and afterwards proved to be the Buckeye,) was advancing, with her starboard bow upon the larboard bow of the De Soto, and in this direction they came together, the larboard bow of the De Soto striking the starboard side of the Buckeye about opposite her forward hatch. Immediately after, witness heard Capt. Reed, who was then forward, order the pumps of the De Soto to be tried. The concussion was so slight, that witness did not believe much injury was done, and was not afraid either boat would sink, until Captain Reed gave the order. Witness ran to, and obtained his pantaloons and money, in the state room, and returned again with them in his hand, when deponent saw the Buckeye was fast sinking; as she went down, the two boats came along side of each other, the starboard side of the Buckeye to the larboard side of the De Soto. By the time the Buckeye had sunk to her hurricane roof, the two sterns had separated, the De Soto's bow about the forward part of the hurricane roof of the Buckeye. Capt. Reed, and all his officers, made every exertion to save the passengers of the Buckeye, many of whom were saved by his yawl, but most of them passed from the hurricane roof of the Buckeye on to the bow of the De Soto; Capt. Reed remained up the whole time, in his night clothes.

Witness has sketched, on a map now present, his opinion as to the position which the two boats occupied when he saw them come in collision; witness supposed the Buckeye had turned her head, quartering down stream, in order to avoid the collision; witness went out on the boiler deck, and believes he was nearest to the larboard side of the boat, and then saw Capt. Reed in his post at the moment the collision took place. Capt. Reed had been up all night, and had retired only a few minutes before the collision; and wishes to add, that, throughout the whole trip, he bears the most full and ample testimony in favour of Capt. Reed, and has travelled considerably on steamboats, and seldom, if ever, saw a more watchful officer. That deponent is a stranger to all parties, further than travelling on Capt. Reed's boat; does not know that he ever saw either of the parties before, and he believes the discipline of his officers excellent. Deponent was with Capt. Reed, on the boiler deck, in the early part of the evening, when one of the hands took down a red lantern, and after lighting it, brought it back again; when deponent asked him what was the use of hanging out a light so bright and clear a night, he replied, he did not think there was much use of it, but it was usual.

Aaron Fontaine, being recalled and cross-examined, says:

He is not acquainted with steamboating; is a member of the bar; his acquaintance of steamboating is derived from having frequently travelled on them. After the collision, the two boats came along side of each other, so near that one or two passengers got on to the De Soto from the Buckeye, and then parted again. Witness' impression that the bow of the Buckeye was quartering down stream at the time of collision, was strengthened by subsequent observation; does not state, or pretend to state, positively, the position of the Buckeye. In the morning, the cabin and hurricane deck of the Buckeye were joined to the De Soto, both bows together, in opposite directions, the bow of the De Soto pointing down stream. Witness' strong belief is, that the Buckeye was crossing from the island towards the bar, and was between the De Soto and the island. Witness believes the bow of the De Soto down stream when the collision took place; they then came along side, then separated, and gradually widened until morning, when the cabin of the Buckeye was pointed in an opposite direction from the bow of the De Soto, the bow of the De Soto then pointing downward; thinks the De Soto did not change her direction much during the night after the collision. When the two boats were along side of each other, witness thinks their two bows pointed downwards across, rather towards the bar. At the time of collision it was a very bright night, and could plainly see the shores, though the distance was so great he could not distinguish objects; could see trees very distinctly; could distinguish moving objects, such as a man dressed in white; could discover the general character of either shore. From a comparison of the shore after daylight, with what it appeared at the time of collision, witness thinks the De Soto maintained the same position she did at the time of collision. At a few minutes after the collision, witness, and others, at the instance of Capt. Reed,

went on the hurricane deck of De Soto, and then glanced at the shore, to see whether the De Soto was in the middle of the river, and from that observation thinks she was.

Being asked what particular features of the shores did he observe? Answers, as there were no very remarkable objects in view, there was nothing made strong enough impression on witness' mind, to recall it at present; since reflection, there is one he can recall, that is, the bend of the river was on the right, meaning the bend from where the De Soto came, turned around to the right.

Witness being asked what the shores forward differed from each other? cannot say; both had trees, as witness believes. Thought the De Soto was off the same point in the morning where the collision took place; she was drifted near to shore with the wreck. Inasmuch as no particular features of the shore were observed, and as the De Soto was moving during the night, it is possible witness may be mistaken as to the direction of the De Soto at the time of collision, though witness' belief is very strong to the contrary. Witness thinks if the Buckeye had continued the direction she was in when the collision took place, she would have gone on to the willow bar, as the line on the map indicates. Witness is not familiar with the technical names of the different parts of a steamboat; witness has had no conversation with the officers or crew of the De Soto since leaving her, and he left her immediately on her arrival in port; had but very little conversation with them on the boat. Witness drew up a card in relation to the conduct of Capt. Reed, as published; had no conversation with the officers or crew of the De Soto about the collision, at any time; no particular conversation that deponent recollects of. Witness voluntarily gave Capt. Reed a certificate of facts, which were only seen by witness and other passenger among the passengers, as far as witness knows; this certificate was drawn up and given to Capt. Reed without his knowledge.

Chief examination resumed.

Witness being asked if he knew the signification of the term starboard and larboard, answers, perfectly; by starboard he means right hand, and larboard left side. And asked whether he knew their signification before the collission, answers, yes; that he always supposed the starboard to mean right, and larboard left.

Cross examination resumed.

Witness admits that he did ask, during his examination, whether he was right in his use of the word starboard.

Signed, AARON FONTAINE.

Sworn to and subscribed before me, this 10th March, 1844.

Signed, J. BALDWIN, *Recorder*.

Robert George Watson, being duly sworn, deposes and says, that he is now, and was on Friday last, the second engineer of the steamboat De Soto, and was on her at the time of the collission between her and

the Buckeye, and was on watch at the time thereof. The alarm bell of the De Soto was rung, when the bell to stop the engine was rung, then the bell to back the engine was rung; upon which deponent backed the engine five or six revolutions; and at the time of the collission does not think the De Soto had any head way on her. Does not know any thing about the position of the two boats.

Signed, ROBERT GEORGE WATSON.

Sworn to and subscribed before me, this 7th March, 1844.

Signed, J. BALDWIN, *Recorder*.

Thomas O. Moore, being duly sworn, deposes and says, that he was a passenger on the De Soto, on Friday last, when she came in collission with the Buckeye, about four miles from the mouth of Old river. Deponent was in his berth and partly asleep, and felt a slight concussion, which deponent believed a running against a log or bar; deponent turned over in his berth, but hearing some persons crying, "run out of the cabin," deponent got up and went on the starboard guard, and then saw another boat, (which proved to be the Buckeye,) with her head up stream, and so was the De Soto's, at about an angle of 25 or 30 degrees, and about 20 feet apart at the bows. Deponent supposed the boats were near the middle of the river. The De Soto had turned round entirely, and at the time when deponent went on the guard, had her head up stream. Could not tell the shore the Buckeye had come from, if she was from either.

Signed, THO. O. MOORE.

Sworn to and subscribed before me, this 7th of March, 1844.

Signed, J. BALDWIN, *Recorder*.

Jacob G. Forsman, being duly sworn, says, he is 2d engineer of the De Soto, and, as such, was on her on Friday morning last, when she came in collission with the Buckeye, and on duty at the time. Deponent heard the alarm bell, then the bell to stop the engine, which was stopped immediately, then the bell to back her, also obeyed, making four revolutions before the collission. Knows nothing about the position of the two boats.

Signed, JACOB G. FORSMAN.

Sworn to and subscribed before me, this day of March, 1844.

Signed, J. BALDWIN, *Recorder*.

John T. Nobles, being duly sworn, deposes and says, that he was a passenger on board of the steamboat Buckeye, on Friday morning last, when she came in collission with the De Soto, and was up at the time, and in the social hall. Deponent heard an alarm bell, but of which boat, is not positive, yet believes it was of the Buckeye, and then ran out on the boiler deck, and from thence on the left side, and then sprung on to the De Soto, whose bow was upwards, deponent believes. At this time, the Buckeye had sunk so that the water was running over her lower deck, and was still sinking more, and disappeared in a short time.

The captain of the Buckeye was in the social hall, where deponent and others were, when the alarm was given, who jumped up and ran out, and deponent saw nothing more of him until after the sinking of his own boat, when deponent saw him on the De Soto. Immediately after the alarm bell was sounded, deponent felt the concussion of the two boats. The two boats were very near the middle of the river when they came in collission—the Buckeye ascending, the De Soto descending. The moon was shining, though very near down.

Signed, JOHN T. NOBLES.

Sworn to and subscribed before me, this 6th March, 1844.

Signed, J. BALDWIN, *Recorder*.

B. B. Hart, being duly sworn, deposes and says, that he was a passenger on board of the steamboat Buckeye, when she came in collission with the steamboat De Soto, on Friday morning last, the first inst., and was up at the time in the gentlemen's cabin, conversing with J. Ganet and others. The Buckeye struck something violently, and the concussion jarred every thing considerably, (which proved to be the steamboat De Soto,) so suddenly, that deponent heard nor saw nothing previously. Deponent immediately ran to the door leading to the guard, and saw we were in contact with another boat, which proved to be the De Soto, she being still close to the Buckeye, and a little forward of the bow of the Buckeye; seemingly, the violent concussion making them rebound from each other. Both boats were near the middle of the river, the De Soto descending, and the Buckeye ascending; the position of the latter, at an angle of about 45 degrees, and deponent believes, crossing the river from the right to the left side. The De Soto struck the Buckeye on the starboard side, but where abouts deponent does not know. Deponent remained on the Buckeye about two minutes after the concussion, and then, finding her making water so fast, and believing she would sink, immediately jumped into the river and remained in it some time, endeavoring to get on the De Soto; but, unable to do so, returned to, and got on board of, the hurricane deck of the Buckeye, from thence got on the De Soto. Deponent saw nothing of the captain, nor no officer except the clerk of the Buckeye, during the time of concussion, or after, till deponent got on the De Soto. Deponent heard no signal for stopping the engine of the Buckeye, and believes she was under full head way.

Signed, B. B. HART.

Sworn to and subscribed before me, this 6th March, 1844.

Signed, J. BALDWIN, *Recorder*.

Edward Hughson, being duly sworn, deposes and says, that he was a passenger on board of the steamboat De Soto, on Friday morning last, when the collission between her and the Buckeye took place. Deponent had been awake for about half an hour previous to the collission, and was lying in his berth when the concussion took place, and was then under the impression the boat was at or near the mouth of Red

river, from their backing the engine. When the concussion took place, the boat was but slightly jarred, no idea of her having struck another boat. Deponent went out immediately, and saw the Buckeye near to the De Soto—apparently, the two boats together, angling and up streamwards. Previous to the concussion, the engine bell of the De Soto was rung, which, together with backing of the engine, induced the belief of being at the mouth of Red river, and preparing to stop The two boats were very near the centre of the river—the De Soto coming down, and the other going up. The pilot of the De Soto said, after the concussion, that he saw the light (meaning the light of the Buckeye) about half a mile off, but had no idea she would come within a quarter of a mile of the De Soto. The pilot, moreover, said, that if he had not backed his engine, the Buckeye would have ran into the wheel-house or ladies' cabin of the De Soto. Deponent believes the Buckeye had been on the left hand side of the river when ascending, and was then passing over to the other. The De Soto remained about the spot where the disaster took place, until about 12 o'clock that day, rendering all the assistance that could be afforded. Deponent heard the captain of the De Soto (Reed) cry aloud to the persons on the Buckeye, to come on board of his boat immediately, as the Buckeye was sinking very fast. Saw nothing of Capt. Caldwell until after the sinking of the Buckeye, which took place in about five minutes, when deponent saw him on the De Soto. The cabin of the Buckeye having separated from the deck of the boat, was fastened to the De Soto, and in that way many were saved.

Signed, E. HUGHSON.

Sworn to and subscribed before me, this 6th March, 1844.

Signed, J. BALDWIN, *Recorder*.

Mr. Hughson, being recalled and examined in the presence of the counsel for both parties, states his former statement of the Buckeye being on the left hand side of the river, should be on the right instead thereof; and his reason therefor was derived from the position the boats occupied when first seen. The ascending boat, or Buckeye, angling towards the bar shore, and that of the De Soto with the bow down the stream.

Cross-examined.

Deponent did not see the boats come together, being in bed at the time, and had no other means of forming an opinion than from the position in which they were when first seen.

Signed, E. HUGHSON.

When they swung around, the bow of both boats were standing up the river.

Sign'd, E. HUGHSON.

Sworn to and subscribed, before me, this 7th March, 1844.

Signed, J. BALDWIN, *Recorder*.

David H. Jones, a witness for defendant, after being duly sworn, deposes and says: That he is a pilot now, and has been for 8 or 9 years,

on the Mississippi river and tributary streams, and is very well acquainted with the navigation of Old river, and passed up it, on the Jo. Nichols, on the evening of the same day when the collision of the De Soto and Buckeye took place, and saw the cabin of the Buckeye tied to the shore, 2½ miles from the lower point of the island; and, on the island side, saw nothing that would indicate where the Buckeye was lying; but was informed by persons, on and about the hurricane deck, that the hull of the Buckeye was lying nearly opposite. Witness thinks it very necessary that persons, who propose to manage steamboats, either as captain, engineer, or pilots, should first be examined and certified by a board of competent examiners as capable before being allowed to engage as such. Witness believes that collisions between steamboats, in such parts of a river as Old river, are the result of carelessness, or obstinacy, on the part of the pilots. Witness is now engaged as pilot on the Jo. Nichols, running into the Ouachita river, and invariably hoists one signal light, above the pilot house, when running *at* except when in bayous, where there are no boats; never had but one, and the usual custom is to have only one signal light, but some few boats have two; the last trip we had but one.

Signed, D. H. JONES.

The following are answers in reply to questions propounded by defendant:

Witness is acquainted with Robert Klady, has known him some 6 or 7 years; and as pilot, deponent believes, he has been engaged some 4 or 5 years, and always in the Ouachita trade; and among steamboat pilots does not stand very well, and has the reputation of being headstrong and careless. Has not known him in any other than Capt. Caldwell's employ as a pilot. If witness owned a steamboat he would be unwilling to employ him as a pilot.

Signed, DAVID H. JONES.

Sworn to and subscribed before me, this 11th March, 1844.

Signed, J. BALDWIN, *Recorder*.

Elijah Ensign, being duly sworn, deposes and says: That he is chief engineer of the steamboat De Soto, and was on her, but not on duty, at the time of her collision with the Buckeye. Deponent was in *her* birth on the hurricane deck, and was awoke by the alarm bell of the Buckeye; upon hearing which, deponent heard that of the De Soto also. Witness then heard the engine bell rung, following the alarm bell as close as possible, upon which the engine was stopped; then the bell rang to back; the engine backed as quick as possible, and heard her backing four or five revolutions. Deponent then reached and opened the door, and looked out on the starboard side; saw nothing; got out; went around the after side of the room, and went across on to the larboard side of the boat; there saw Capt. Reed in his drawers; started aft, saying to the passengers on board the other boat, to get up on the hurricane deck; that the boat would swing around, for every one to jump on board; (about the time witness came out of the door, on the

starboard side, witness felt a slight jar.) Witness asked the pilot (McGuire) what boat it was? Witness, before he answered, asked if a line could not be got to her to tow her ashore; he remarked she was sinking too fast. The steam of the De Soto then commenced blowing off, and made such a noise as to prevent hearing any thing; and thinking the firemen would neglect their duty, went to and ordered them to wet them out, and commenced moving some wood, and started the pump; went down in the hole, and found she was not making water. Witness' duty did not require him to do so; but hearing the mate calling the men to go to the yawl, feared it might be overlooked. Witness remained in and about the fires, and got them in proper order. Went out on the forecastle, and thence on to the Buckeye, and assisted some passengers on the De Soto for one half an hour; then returned on the De Soto, and then saw Capt. Reed using every endeavor to save the lives of the passengers. Witness, on the last trip of the De Soto, was on her, and arrived at the place where the Buckeye lies in Old river yesterday morning, which boat stopped about the place one hour and a half, engaged in sounding the depth of water; and not being on duty at the time, assisted in sounding, and flung the line himself. The pilot Mallary, and mate, went out in the yawl; witness remained on the De Soto after the yawl had found the wreck; the boat started, and went right straight towards the willow shore, in a direct line, across the river, over the wreck, and ran her head right into the willows, about 15 feet or more, and there found a depth of $12\frac{1}{2}$ feet, and understood that the water had fallen 5 to 8 feet, from the 1st March, till yesterday morning. Capt. Kimbell then went right across to the other shore, passing over the hull of the Buckeye, and found no scarcity of water for the boat anywhere. The De Soto then recrossed to the willow bar, turned her head down, (the mate and pilot having got on board from the yawl,) and ran along side of the willows, says within 20 to 30 feet of them, the mate heaving the lead, and found one cast $2\frac{1}{4}$ fathom; but all the others, each one about 40 feet from each other, about 3 to $3\frac{1}{2}$ fathom all the way, until the foot of the bar; there no bottom was found with about 7 fathom line.

Signed, ELIJAH ENSIGN.

Sworn to, subscribed before me, this 14th March, 1844.

Signed, J. BALDWIN, *Recorder*.

Andrew Carlisle, being duly sworn, deposes and says: That he is a pilot by profession, and now engaged as such on the Cote Joyeuse, in running up Red river. In 1840, in the latter part of it, and early in 1841, was on the Norma, and so was R. Klady, as pilots. Klady was on a boat previous learning to be a pilot, though does not know whether he stood a regular watch until he joined the Norma with deponent. Deponent sometimes gave him directions how to run on his taking watch. First knew him in 1838, when he was an overseer on Major Downs' plantation. He believes the America was the first boat he was on as a pilot. Witness did not consider Klady a first rate pilot when

on the Norma; did not consider he had experience enough. Klady had been on the Nashville, Hannibal, and Bonaparte, and, lately, Buckeye, and knows he was on the Nashville as a pilot when she sunk in the Ouachita with a load of cotton; does not know what sunk her, and who was at the wheel at the time; it is at a very bad place—stumps on both sides of the river. George Caldwell commanded her at the time, the same who lately commanded the Buckeye. Witness has never known Klady to have been in any other employ as pilot than with Capt. Caldwell.

Cross-examination.

Witness cannot say that Klady is smart or intelligent, is active, and middling stature, not a giant; can't say he is foolish, never paid much attention; cannot say he is stupid, should say he has common sense; at the time Klady was on the boat with witness, as far as deponent knows, he ran it well, though witness always went to sleep when he came on watch; he always stood his own watch, except on the bayous. Witness is in his 29th year; witness stood as a regular watch in 1837; witness supposes that Klady is not over 30 years old, judging from his appearance; witness thinks it very desirable that all captains, pilots, and engineers of steamboats should be subject to examination before entering on their duties; witness believes that a great majority of cases of collision and explosion of steamboats are, in a great majority of cases, owing to want of skill, or carelessness of those in charge thereof. It is a rule observed among steamboat men, that the ascending boat keeps around the bar, and the descending one in the bend. It is usual for boats to carry signal lights. It is a rule with deponent, if going up, to close the shore so close as to avoid meeting a boat descending, and if going down to follow the bend. If deponent had the management of a boat coming down, and saw a boat 200 yards off, coming up, he believes he could avoid their coming together, if the other boat did not sheer towards deponent.

Signed, ANDREW CARLISLE.

Sworn to and subscribed before me, this 8th March, 1844.

Signed, J. BALDWIN, *Recorder.*

George Ponsanley, being duly sworn, deposes and says:

That he was a passenger on board of the steamboat Buckeye, when she came in collision with the De Soto, on the morning of Friday, the first instant, at 4 o'clock. Deponent had retired to bed, but unable to sleep on account of fears of the boat, she being very old, got up, and had been up about two hours previous to the collision; the moon was still shining, looking about an hour of sitting; deponent was seated in the social hall, with the captain, about six or eight feet from deponent, talking to an old gentleman, a passenger also; in the hall were several others, names not known, except Mr. Mable, now present, and Johnson, who was lost. Deponent and two others were amusing ourselves

with a little game, when deponent heard the alarm bell, but of which boat deponent could not tell, and immediately thereafter deponent felt the concussion, which tilted the table a little, around which deponent and others were seated. Simultaneously with the sound of the bell, the captain jumped from his seat and ran out, of whom deponent saw nothing more until he saw him on the De Soto, after the sinking of his own boat. The cry was "the boat was sinking;" deponent endeavored to get in the ladies cabin, to assist his sister-in-law and her children, but was prevented by the confusion of the passengers and furniture of the boat. Deponent then returned back again to and passed through the social hall, and by some means, which deponent does not recollect, got on to the hurricane deck, and thence on to the De Soto, which was near by. At the time of getting on board of the De Soto, there was such a smoke or explosion of steam as to prevent deponent from seeing what was transpiring on the Buckeye; deponent believes she was sunk nearly as deep as she did ere deponent left her; when deponent reached the hurricane deck of the Buckeye, the boats were near together, and the bow of the Buckeye near to the bow of the De Soto. The boats were both near the middle of the river at the time of the collision, the Buckeye ascending, and the De Soto descending; deponent knows nothing further about the Buckeye than what was gained in going up on her.

Signed, GEORGE PONSANLEY.

Sworn to and subscribed before me, this 6th March, 1844.

Signed, J. BALDWIN.

E. E. Malloy, being duly sworn, deposes and says:

He is now, and was at the time of the collision between the Buckeye and the De Soto, pilot of the latter boat, but not on duty at the time of the collision, deponent's duty having terminated at 12 o'clock, night; deponent was up at Bonrow's wood yard, in Old river, nearly opposite the mouth of Red river; after wooding, witness went to his birth, and laid there, and was awoke in it when the alarm bell was rung; witness also heard the backing bells ring, and heard the engines making several backward revolutions, up till the boats came together; witness supposed she was landing; when they came together witness got out of his berth, still ignorant of the De Soto having encountered a boat, as the jar was very slight, and was unconscious of its being a boat, until witness went out of his room, which opened out on the hurricane deck, on the starboard side of the De Soto, and then went around forward of the pilot house; then witness discovered a boat on the larboard side of the De Soto, about 15 or twenty feet distant, forming an angle in the direction she was pointing, compared with that of the De Soto, of less than 45 degrees; the heads of both pointed towards the bar shore, the De Soto downwards, and that of the Buckeye upwards; deponent enquired of McGuire what boat that was; witness discovered, before he replied, it was the Buckeye, by the pilot; then witness heard Captain Reed, who was standing on the cotton, on the hurricane deck, on the

larboard side, in his drawers, cry out to "go ahead." Witness thinks the engine made two revolutions, and then stopped, by his order; witness then heard him say, shortly after, to back her, as she was likely to advance ahead of the Buckeye; witness then heard Capt. Reed say aloud, to the passengers on the Buckeye, to get on to the hurricane deck of the Buckeye; the bows of the two boats had closed, or nearly so, so that a ladder from the forecastle of the De Soto on to the hurricane deck of the Buckeye; witness saw Capt. Reed still in his drawers, zealously exerting himself to save the lives of the passengers of the Buckeye, during all the time till they were generally on board; witness has, since the collision, made a trip in the De Soto, and saw the depth of water on the bar of Old river ascertained by a good leadsman yesterday morning, and ascertained it to be two fathoms, 20 to 30 feet from the willows on the left hand bar, ascending all the way from where the hull of the Buckeye now lies, down to the nearest point of the island; witness ascertained where the Buckeye lies by the lead, assisted by two pieces of stanchions, supposed to be still attached to her and above water; there was about 30, 32, 34 feet of water on the Buckeye, full 30 feet on the main deck; all around her there was 38, 39, and 40 feet of water, and that at least 150 yards towards either shore from her, in a line directly across the river, over the hull of the Buckeye, there is a gradual diminution of depth of water from the boat to the willows on the bar side, where it measures 12 feet. The De Soto was used in sounding the depth of water in or about the Buckeye's hull, and run her bow against the willows, and sounded there, and found 12 feet water; witness thinks the depth of water on both sides of the hull of the Buckeye, 150 yards from it, about the same. The De Soto, drawing 6½ feet water, landed on the island shore opposite the wreck, on her last trip, and finding the water becoming deeper after 150 yards from the Buckeye, ceased to try with the lead any more. Witness says the De Soto could run on either side of Old river, within 50 yards of the shore, to about one mile above the wreck and the island shore, and all the way to the Atchafalaya on the other.

Signed, E. E. MALLONY.

Sworn to and subscribed before me, this 14th March, 1844.

Signed, J. BALDWIN, *Recorder*.

A CARD.

De Soto and Buckeye.

(A.)

David McGuire, pilot at the wheel of the steamboat De Soto, states, that the De Soto left the wood yard on Red river island, opposite the mouth of Red river, at three o'clock on Friday morning, the first day of March; that when in the reach on the lower side of Red river island, he saw a steamboat, which proved to be the Buckeye, at a distance of near three miles; that the De Soto was then, and continued to be, as near the middle of the river as could be from observation, and the Buckeye appeared to be running up the island shore as close as

boats usually do; that the Buckeye continued her course until the pilot saw her fire-lights aft of the larboard chimney of the De Soto; the next sight of the Buckeye, she was headed across the river, when the mate of the De Soto rung the alarm bell, and, apprehensive of danger, the pilot rung the bells to stop the engines, and immediately rung the backing bells; the engines backed at the first effort, and strongly; when, having made six or seven revolutions back, the De Soto and Buckeye came in collision, by the Buckeye running across the bow of the De Soto, at an angle of more than forty-five, and that the sterns of the two boats were not more than four or five feet apart when the boats came together, the starboard bow of the Buckeye crossing the larboard bow of the De Soto; the boats were at the time in still water, there being no current in Red river, through Old river, into the Mississippi, on the lower side of the island, and little, if any, in the upper side, owing to the greater portion of the waters of Red river going down the Atchafalaya; that as soon as he discovered the Buckeye sinking, he backed the De Soto on the starboard engine, until the boats were side and side; the sterns of the boats afterwards separated, when he went a turn or two ahead on the same engine, which brought the bow of the De Soto so near the hurricane roof of the Buckeye, that one of De Soto's crew, with the assistance of a ladder, went on board the Buckeye, and made a rope fast to the bell post of the Buckeye. The collision took place in Old river, and as near the centre as could well be ascertained, and abreast the upper end of willow bar. If the De Soto had way on her at the time, it was stern way from backing. The Buckeye sunk immediately, and, in going down, the cabin separated from the hull of the boat. The hull of the Buckeye now lays in not less than sixty feet water, which fact can be ascertained by sounding for her.

B. C. Miller, mate of the De Soto, states, that he was on deck, and in charge of the De Soto, from the time she left the wood yard on Red river island; that he saw the boat, as described by the pilot, and that, when within half a mile, she was still standing up the island shore; that when the Buckeye changed her course, the pilot asked him what that boat was trying to do; he answered, he did not know, but that he had better stop her, which he did, and backed her immediately; the boats came together, as before described, and that the engine of the Buckeye did not stop until within half her length of the De Soto; he does not think that the stems of the two boats were more than three or four feet apart when the boats came together, and that the De Soto had no headway on her at the time; that she had backed as much as we usually did, when landing, stern up stream, on Little river, which is the only way of landing when descending that river.

Robert G. Watson was at the starboard engine, and states, that his engine had made five or six revolutions back, when the boats came together.

Jacob G. Forsman was at the larboard engine, and states that his engine had made four revolutions back before the collision; and that the boat could have had no headway on her when the accident occurred.

Capt. Reed, master of the De Soto for the voyage, states, that he was up when the boat left the woodyard at 3 o'clock; that he had then laid down, but had not been asleep when the alarm bell rung; that he was on deck when the boats came together, as described by the pilot; and that he does not think the engine of the Buckeye was stopped till the collision took place; that the De Soto's engines had backed sufficient to stop all headway; from this time he was engaged with the officers, passengers, and crew of the De Soto in rescuing the sufferers from the wreck of the Buckeye.

George McDowell, watchman, states, that he was in the engine room when the alarm bell rung, and when the bells rung to stop, and to back the engines; that before the boats came together, the engines had made four or five revolutions back; that after the De Soto had left the woodyard at 3 o'clock, Captain Reed had cautioned him to keep a good watch, and to call him if any thing occurred; but before he got on deck Captain Reed was there.

Signed, DAVID McGUIRE, *Pilot*.

Daniel McGuire, being duly sworn, deposes and says, he was pilot of, and on board of, the De Soto on Friday morning last, when the collision took place between her and the Buckeye in Old river; and having read to witness a statement which appeared in the Tropic on the ——— instant, says, it appeared under deponent's authorization, signed by witness; but there are things in it that deponent would not swear to. Said statement is filed, for better reference, marked A. The De Soto was kept as near to the middle of Old river as he could judge, after leaving Borrow's woodyard, and did not cross over to the left hand point going up. The Buckeye, at the time of leaving the island shore, and turning across the river, was so far up, that witness saw her abaft his larboard chimney, distant about one-half or three-fourths mile. Witness says, the Buckeye, after turning to cross, was coming right exactly towards the De Soto, at about an angle of about 45° across the river.

Chief examination resumed.

Witness being asked, whether, when speaks of seeing the light of the Buckeye abaft the larboard chimney of the De Soto, he means to say, the light was not in a forward direction from him, says it was off at an angle of 45 degrees in front. Deponent says there are no substantial allegations in the printed statement marked "A," as to the collision, which he would not repeat under oath. Deponent believes he can see now as well as ever, and as well as any man; there is no defect in his vision, except to reading small print. Witness has no difficulty in discovering a boat at night. The collision took place about two miles from the point of the island. The statement formerly made and reduced to writing before the hon. committee of the two houses of the legislature, marked "A," on the 4th page of the evidence taken, was, by consent of the counsel of the opposite parties, made a part of the evidence in this case; and witness affirms that statement to be substantially correct.

Signed, DAVID McGUIRE.

Sworn to and subscribed before me, this 7th March, 1844.
Signed, J. BALDWIN, *Recorder.*

B. C. Miller, being duly sworn, deposes and says, that he is now, and was on Friday morning last, when the collision took place between the De Soto and Buckeye, mate of the De Soto, and was on board of her at the time, and between 3 and 4 o'clock A. M., in the lowest part of Old river, and about three miles from the Mississippi, by the course of the river. While deponent was on the hurricane deck, and about one or one and a half miles distant, deponent saw a light, and plain enough to satisfy myself that it was a steamboat, appearing to be running up Old river, the De Soto descending the same, and with deponent, at the time, was a passenger, whose name deponent does not recollect. Deponent was satisfied the steamboat was running up on the upper or island side of the river. Deponent went down on to the boiler deck, and directed the hands on duty to try the pumps. The boat ascending appeared to be running near the shore—a fair berth from the shore—say two or three lengths. Deponent went on to the hurricane roof again, and saw the boat ascending, apparently in the same position as before. A short time thereafter she appeared to strike across for the other side of the river; and being satisfied that was the case, deponent directed the pilot to stop the De Soto; which order was obeyed, the engine stopping on the bell being rung. Deponent perceiving the boat approaching towards the De Soto, ordered the pilot (McGuire) to back her. Deponent believed she was backed some several revolutions, and sufficient to stop her way, when the two boats came in contact, near the middle of the river, the starboard bow of the Buckeye passing rather under the larboard bow of the De Soto. The larboard bow of the De Soto appeared to jam in the hull of the Buckeye, near to her forward hatch, smashing the Buckeye very easy. The hurricane roof of the Buckeye appeared to come up near to the bottom of the De Soto, and the bow of the De Soto nearly over or up on the Buckeye. The Buckeye sinking very fast, deponent threw a line on to the Buckeye, and *cryed* out to make fast; but it was not made fast then, but was some time after. Every exertion was then made to save the lives of the passengers of the Buckeye, which boat sunk immediately, with the exception of the cabin, which separated from the hull. Some time after, deponent tried, with a six fathom line, and found no bottom. The De Soto, with the cabin of the Buckeye, must have floated a little distance from the place where the Buckeye sunk. Deponent is not much acquainted with that river where the collision took place, and cannot speak positively about the propriety or impropriety of crossing the river there. Deponent is of opinion that if the De Soto's engine had not been backed, the Buckeye would have struck the larboard side of the De Soto, near the wheel. Probably she might have struck further aft; but it is my opinion now, if the De Soto had not stopped her engine, nor backed, and both boats kept the same position, she would have cleared the Buckeye entirely.

Witness being asked, whether, when he ordered the engine stopped and backed, it was not his opinion, from the position and course of the Buckeye, that his ordering the engine being stopped and backed, was the only mode of avoiding a collision, answers, it was, and he done it under his best judgment. Deponent is of opinion the engine of the Buckeye was stop't about half a length before the collision, and witness was observing her very closely, believing her safety depended entirely upon her engine being stopped in time. Deponent rang the alarm bell of the De Soto about the time deponent caused the engine to be backed, and the Buckeye's alarm bell rang about the same time. Deponent is positive the Buckeye was running up on the right-hand shore, as ascending, when she turned across the river, as before stated. Immediately after the persons on the Buckeye got on board the De Soto, a person, whom deponent does not know, was standing on the forecastle, when deponent inquired of him what the Buckeye was running in that position for. He answered, I was at the wheel, and the wheel rope parted; deponent said it was no reason for keeping her kicking, when he said the rope broke after the boats struck. The person did not come down on the De Soto.

Cross-examined.

Deponent believes the river, at the place where the collision took place, full a mile wide. The position and course of the De Soto previous to and at the time of the collision was directly down the middle of the river, though believes the head of the De Soto was inclined, just about the time of the collision, towards the island, after backing, which altered her position a little, and inclined her towards the island shore. She (De Soto) was running at about eight miles per hour. Deponent thinks he was down about half a minute, and it was about three or four minutes, or more, after reaching the hurricane deck again, before the collision. The Buckeye, deponent thinks, was between one-half or three-fourths of a mile distant when she commenced turning across to the opposite shore. It was a very short time after deponent gave the order to stop the engine, before he next ordered her back, perhaps ½ minute. Deponent thinks the Buckeye was at least twenty rods distant when he ordered the engine of the De Soto stop't. All of that, and probably more, at the time deponent ordered the engine stopped, the Buckeye was angling across the river, at about 45 degrees, towards the point on the left side ascending. Deponent ordered no change in the course of the De Soto.

Chief examination resumed.

When witness ordered the engine of the De Soto to be stopped, it was his belief she intended to cross ahead of the De Soto, and done so to enable her to do it. The De Soto had a light out, hanging over the hurricane roof—a globe lantern; cannot state whether the Buckeye had any other than her furnace light.

Signed, B. C. MILLER.

Sworn to and subscribed before me, this 7th March, 1844.
Signed, J. BALDWIN, *Recorder.*

Isaac Johnson, a witness for defendant, being duly sworn, deposes and says: He is an engineer, and was a passenger on board the Buckeye when she came in collision with the De Soto, on Friday, the 1st instant. Witness was up when the Buckeye entered Old river, and went out on the boiler deck, and saw them throwing the lead—the boat then going up on the island shore, until she got up about half a mile; then deponent went into the edge of the social hall, where persons were playing cards, and there remained for about twenty or twenty-five minutes, when deponent heard the tap of the bell; witness heard another bell answer it immediately, when witness went out on the boiler deck again, as soon as deponent could go, and there discovered a steamboat coming down, some two hundred yards off, about the middle of the river; the Buckeye was then heading across the river from the island side to the bar, and across the other boat's bow. Witness turned and ran back into the social hall, and told those who were playing cards to take care of themselves, there would be a collision, if the course of the Buckeye was not altered. If at that moment the course of the Buckeye had been altered, viz., by turning her head to the island shore, the collision might have been very easily avoided; the Buckeye would have passed up between the De Soto and the island shore, escaping the De Soto by 15 or 20 feet; and she ought to have continued up on that side, and not attempted to cross. The Buckeye might have seen the De Soto for about 1½ or 2 miles above where the collision took place. The Buckeye still held on to her course across the river, without making this change, which witness believes would have avoided the collision. Witness, immediately after giving notice, as above stated, ran back to the boiler deck, to see the collision if it should occur. On arriving on the boiler deck, the bells of the De Soto were rung and the engine and immediately the bell of the De Soto was rung to back, and the engine did back strong—performed well; the Buckeye still held on her course, until within 40 or 50 yards, running at about 10 miles per hour; she then stop't her engine, and rung the bell to back; she made one and a half revolutions, or three escapements, when the collision took place; her headway was not by any means stopped. The De Soto had at that time made some five or six revolutions, very strong, in backing, which is as much as is generally made to stop the headway of a boat in landing, her *steam* up stream; and also, from this, and her stern being a little towards the island, believes her headway was checked, or nearly so. The Buckeye struck the De Soto on the larboard bow, at about two feet from her (De Soto) stern; the Buckeye striking her, as near as deponent could judge, with her stem. Witness saw it at the moment of the collision, but from the quantity of hay on the bow or forecastle of the Buckeye, witness could not see over far enough to be positive it was the stem that struck, but thinks it was, from the position of the boats and direction of the Buckeye. When the collision

took place, the slack and loss of headway by backing turned the bow of the De Soto up stream, and caused her stern to swing around towards the island and down stream. The Buckeye immediately after the collision commenced sinking very fast, bow nearly up stream. The cabin of the Buckeye soon after parted from her hull, and floated, lying nearly alongside of the De Soto, both bows pointing up stream. Witness remained on the cabin of the Buckeye one hour or so, assisting to save the passengers.

Captain Caldwell was seated by the stove in the social hall at the time the alarm was sounded, and remained there until after a gentleman, who went out with deponent, returned and told him that a boat was about to run into him. When witness returned to notify the passengers, Captain Caldwell was missing from where deponent left him, when witness ran back to the boiler deck again to see the collision. Witness did not see Captain Caldwell there, nor did he see or hear the voice of Captain Caldwell from the time he saw him in the social hall until after the collision, when he saw him on witness' return into the hall for his trunk. At that time he saw Captain Caldwell running through the main cabin towards the ladies' cabin, and heard him cry, "O, Lord! I am badly run into; I think I am sinking." If he had been on the boiler deck after the alarm was given, and before the collision, witness thinks he would have seen him, or heard some order from him. Witness has had about 16 years' constant experience in steamboating, as engineer. After hearing the alarm bell sounded at such an hour at night, and answered by another boat, the captain being seated in the social hall, what was his duty? Witness answers, to have gone right to the hurricane deck to the pilot. If he did not do so, and was informed, as witness says he was, that a boat was about running into him, where was his proper place then? Witness answers, it was his duty still to have gone to the pilot. The captain ought to have stated to the pilot on the sound of the alarm bell; and if he had done so, he might have possibly saved the boat. Witness thinks there was time. Witness was asked whether the captain or any officers had been playing cards that night. Answers, not to his knowledge. Nor *was* any of the officers intoxicated, but believes they were all sober. Did not see any of the officers of the boat playing cards that trip. Witness says when he first went out on the boiler deck, on hearing the alarm bell, the Buckeye was crossing over from the island shore, and was about $\frac{1}{3}$ of the distance from the island across when the collision took place.

Cross-examined.

The only persons playing cards whom deponent knows was Sollabeles, who lives at the mouth of Little river and Tensas, on Black river, lately called Trinity. The collision took place somewhere near the middle of the river. The De Soto was about two hundred yards off from the Buckeye when witness went out on the boiler deck, after hearing the alarm bell. Witness has no interest in either boat or either

party to the suit. When the stern of the De Soto swung around, the latter boat came between the island shore and the Buckeye, and were nearly parallel. Old river is about the common width of the Mississippi river, and thinks it about ¾ of a mile across, or more, at that point. The bow of the De Soto was a little up stream about daylight, floating about where the wind blew her. Generally, when witness observed her, her head was pointed up stream after the collision; and never, to witness' knowledge, pointed downwards after daylight, until they commenced backing. The hurricane deck of the Buckeye, after day, quartered into the larboard bow of the De Soto, and was rather pointed up stream. Does not think the hurricane deck of the Buckeye pointed in an opposite direction from the De Soto, until after the De Soto commenced backing or towing her ashore; and that was the way in which they were towed to shore.

Chief examination resumed.

Witness says James Smith, clerk of the Buckeye, told him that if the other pilot of the Buckeye had been at the wheel, he did not think the collision would have taken place. He made no remark about the character of either pilot. This remark was made by Smith to witness on the steamboat Jo. Nichols, since the collision, as we passed up on her to Smith's place. Does not recollect the day or hour. In day time, witness thinks we were seated in the hall or cabin of the Jo. Nichols. Had not much conversation with him at that time concerning the boat; believes it was in Black river; don't recollect the locality.

Signed, ISAAC JOHNSON.

Sworn to and subscribed before me, this 9th March, 1844.

Signed, J. BALDWIN,
Recorder.

Clerk's office, United States district court for the district of Louisiana.

I, N. R. Jennings, clerk of the above entitled court, do hereby certify, that the foregoing 286 pages contain a true, faithful, and correct transcript of all the proceedings, process, pleadings, testimony, documents, and other matters on file and of record, in a certain case in admiralty, wherein George H. Caldwell and James Smith, master and owners of the steamboat Buckeye, are libellants, and Kimball and Reed, master and owners of steamboat De Soto, her tackle and apparel, and furniture, are libelled, No. 6,095, on the docket of said court.

In testimony whereof I have hereunto set my hand, and caused to be affixed the seal of the said court, at the city of New Orleans, [L. S.] this 31st day of March, A. D. 1845.

N. R. JENNINGS, *Clerk.*

I, Theo. H. McCaleb, judge of the United States district court in and for the district of Louisiana, do hereby certify, that N. R. Jennings, who subscribed the above certificate, is the clerk of the said court, and that

faith and credit are due, and ought to be given, to his attestations as such, and that the above is in due form of law.

Given under my hand and seal this 31st day of March, A. D. 1845.

THEO. H. McCALEB, [SEAL.]

United States district court for the district of Louisiana.

To George H. Caldwell and Thomas W. Reed.

You are hereby cited and admonished to be and appear at a circuit court of the United States for the fifth circuit, eastern district of Louisiana, to be holden at the city of New Orleans, on the first Monday in April next, pursuant to an order of appeal, granted on the thirteenth day of December, A. D. 1844, by the hon. the district judge of the United States for the eastern district of Louisiana, from a judgment rendered on the 11th day of December, A. D. 1844, in your favor, and against the said appellants, in a certain cause in admiralty, wherein Geo. H. Caldwell and als., who libelled the steamboat De Soto, her tackle, apparel, and furniture, are appellees, and P. F. Kimball and Reed, owners of the said steamboat De Soto are appellants, to shew cause, if any there be, why the decree, as rendered against the said appellants, and in your favor, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this 20th day of December, 1844, and 69th year of the American idependence.

[L. S.] THEO. H. McCALEB, *U. S. Judge.*

Rec'd Dec. 20th, 1844, and on the 21st Dec., 1844, served copies of the citation of appeal on George H. Caldwell, in person, at New Orleans.

J. B. ROBERTSON, *D. U. S. M.*
A. S. ROBERTSON, *U. S. M.*

United States circuit court for the district of Louisiana.

GEORGE H. CALDWELL et als,
vs.
THE MASTER and Owners of the steamboat De Soto. } No. 1330.

On the 1st of May, 1845, the following entry of record was entered on the minutes, to wit:

THURSDAY, *May* 1, 1845.

The court met pursuant to adjournment. Present, the honorable John McKinley, presiding judge. Absent, the honorable Theo. H. McCaleb, district judge.

This cause came on this day to be heard on the transcript of record from the district court; R. N. and A. N. Ogdens, esquires, for the appellants, and Felix Huston and John Finney, esquires, for the appellees; when, after considerable progress in the cause, the same was continued until to-morrow.

And on the 2d day of May the following entry was entered of record:

FRIDAY, *2d May*, 1845.

The court met pursuant to adjournment. Present, the honorable John McKinley, presiding judge. Absent, the hon. Theo. H. McCaleb, district judge.

GEORGE H. CALDWELL et als.
vs.
THE MASTER and Owners of the steamboat De Soto. } No. 1330.

This cause was this day resumed, when, after some further progress in the case, it was continued until to-morow.

And on the 3d day of May, 1845, the following entry was entered on the minutes:

SATURDAY, *May 3d*, 1845.

The court met pursuant to adjournment. Present, the honorable John McKinley, presiding judge. Absent, the honorable Theo. H. McCaleb, district judge.

GEORGE H. CALDWELL et als.
vs.
THE MASTER and Owners of the steamboat De Soto. } No. 1330.

This cause was this day resumed, when the evidence and argument of counsel being concluded, the cause was submitted. And the court took the same under advisement.

And on the 14th day of May, 1845, the following entry was entered of record on the minutes:

WEDNESDAY, *14th May*, 1845.

The court met pursuant to adjournment. Present, the honorable John McKinley, presiding judge. Absent, the hon. Theo. H. McCaleb, district judge.

GEORGE H. CALDWELL et als.
vs.
THE MASTER and Owners of the steamboat De Soto. } No. 1330.

The court this day delivered its opinion, orally, in this case. And, in conformity wherewith, it is ordered, adjudged, and decreed, that the decree of the district court be affirmed, with costs.

And on the 17th day of May, 1845, the following entry was entered of record:

Saturday, May 17th, 1845.

The court met pursuant to adjournment. Present, the honorable John McKinley, presiding judge. Absent, the honorable Theo. H. McCaleb, district judge.

GEORGE H. CALDWELL et als.
vs.
THE MASTER & OWNERS of the Steamboat De Soto. } No. 1330.

On motion of R. N. and A. N. Ogdens, esquires, counsel for appellees, an appeal is allowed them to the next term of the Supreme Court of the United States, from the judgment rendered in this case, upon their giving bond and security in the sum of seven thousand five hundred dollars; and E. H. Satterfield having appeared in open court and justified in said amount of $7,500, was accepted by the court as a security in said bond.

And on 17th day of May, 1845, the following bond of appeal was filed:

GEORGE H. CALDWELL et als.
vs.
THE MASTER & OWNERS of the Steamboat De Soto. } No. 1330.

Know all men by these presents, that we, P. F. Kimball and Thomas W. Reed, respondents, as principals, and Edward H. Satterfield, of the city of New Orleans, as security, are held and firmly bound, jointly and severally, unto George H. Caldwell and James Smith, libellants, and owners of the steamer Buckeye, in the sum of seven thousand five hundred dollars, lawful money of the United States of America, to be paid to the said George H. Caldwell and James Smith, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us, by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the seventeenth day of May, in the year of our Lord eighteen hundred and forty-five.

Whereas in a certain suit, numbered 1330 on the docket of this court, to wit, the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, and entitled "G. H. Caldwell and als., &c., vs. Master and Owners of Steamboat De Soto and als.," the said P. F. Kimball and Thomas W. Reed have this day obtained from the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, an order granting them an appeal in said suit from the decree of the said circuit court therein rendered to the Supreme Court of the United States, returnable at the next term of said court, on the first Monday of December next.

Now, the condition of the above obligation is that we, the above bounden P. F. Kimball, and Thomas W. Reed, and Edward H. Satterfield, will well and truly pay to the said George H. Caldwell and James Smith, the libellants in said suit, all such damages as they may

recover against us, in case it should be decided that the said appeal was wrongfully obtained.

Signed, P. F. KIMBALL, [SEAL.]
Signed, THOMAS W. REED, [SEAL.]
Per Pro. P. F. KIMBALL,
Signed, E. H. SATTERFIELD. [SEAL.]

Signed, sealed, and delivered in presence of—
Signed, FELIX MCCULLOCK.

And on the 20th day of May, 1845, the following entry was entered on the minutes:

Tuesday, May 20th, 1845.

The court met pursuant to adjournment, Present: The Hon. John McKinley, presiding judge. Absent: The Hon. Theo. H. McCaleb, district judge.

GEORGE H. CALDWELL et als.
vs.
The MASTER and OWNERS of the Steamboat De Soto. } No. 1,330.

On motion of R. N. & A. N. Ogdens, esquires, it is ordered, by consent of parties, that the record made out in the district court for the circuit court, may be used on the appeal in the Supreme Court, so as to save the expense of copying it, and to be added thereto the copies of the maps, to be sent up with the record, reserving any objections of respondents to map A; also the opinion of the district judge as part thereof. It being understood that this opinion was not filed in the case until after the trial in the circuit court, and it being liable to any objections founded upon this fact.

Opinion of the judge of the district court of the United States for the district of Louisiana:

GEORGE H. CALDWELL et als.
vs.
The MASTER and OWNERS of the Steamboat De Soto. } No. 1,330.

The libel in this case was filed by the owners of the steamboat Buckeye, to recover from the owners of the steamboat De Soto ten thousand dollars damages, resulting from the loss of the former boat and her cargo, in consequence of a collision which occurred in what is called *Old river*, the cut-off or branch of the Mississippi, into which Red river empties.

It is alleged, in the libel, that while the steamboat Buckeye was pursuing her voyage in Old river, hugging as closely as she could, with safety, the said bar on the larboard side, about two hundred miles from the port of New Orleans, and about seven miles from the mouth of Red river, and at about twenty minutes after 3 o'clock in the morning of the 1st of March, 1844, and while within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this court, Robert E. Klady, pilot of the Buckeye, then at the wheel, observed the

steamer De Soto (of the burthen of about 265 tons) coming down the river, obliquely towards the bar, which the Buckeye was then closely hugging on the left bank of the river, ascending; that the De Soto was in full motion, propelled by steam, towards the Buckeye; that thereupon the pilot of the Buckeye rang the alarm bell, and made every possible exertion to give notice to the proper officers and crew of the De Soto of the danger of the impending collision; that every exertion was made to back the Buckeye, and keep clear of collision, which might have been easily done, had not the De Soto, with the most culpable negligence, or designedly and maliciously, continued their direction; and that, notwithstanding the Buckeye was hugging as closely as she could, with safety, the sand bar, and was in her proper position and direction, and could not possibly get out of the way of the De Soto; and notwithstanding there was ample room for the De Soto to pass, the officers and crew thereof kept on their course and direction aforesaid, and ran their boat, with great force and violence, foul of and against the Buckeye, striking with the bow of the De Soto between the jackstaff and the forehead hatch, and nearly at right angles, the acute angle being towards the bow of the Buckeye, and broke her, and parted her hull and cabin, and so completely shattered and destroyed her, that she sunk in a few minutes, leaving nothing visible but one end of her yawls, to the loss of many lives and much property, and that she is a total loss.

It is further alleged in the libel, that the Buckeye was before, and at the time of the collision, a tight, strong, and staunch steamer; that, with her tackle, equipment, and provisions she had, worth the sum of six thousand dollars, or thereabouts; that the freight of the cargo on board, and the fare of the passengers, of whom there were many, had they been earned, amounted to fifteen hundred dollars, or thereabouts; and that the immediate consequential damages to the libellants, resulting from the loss of their books, showing large credits in their favor, and otherwise, are damages to the amount of twenty-five hundred dollars; and that thus the libellants have suffered damages in all amounting to ten thousand dollars, or thereabouts, from the said collision.

The answer of the respondents contains a plea to the jurisdiction, and then proceeds to aver, that a collision did take place between the said steamboats, but that the manner and the cause of the collision is falsely alleged in the libel; that the De Soto being in good order, and well manned and equipped, and employed in navigating between the city of New Orleans and Natchitoches, on the Red river, and having performed her upward trip, and being on her return voyage, with a cargo of cotton, and with passengers bound to New Orleans, on the Friday, the 1st of March, 1844, at 3 o'clock in the morning, while running in the middle of what is called Old river, about 3 or 4 miles below the mouth of the Atchafalaya, came in sight of a steamboat, which afterwards proved to be the Buckeye, ascending the river on the island shore, on the right hand side of the river, ascending; that the Buckeye was thus out of her place, it being usual and customary for the ascending

boats to ascend, at that place, on the left hand side of the river; that the night was very clear at the time of the collission, (the moon being about half an hour high,) and the De Soto was provided with her signal lights, so as easily to be seen at a distance; that before passing the De Soto, and when at a distance from a half to three-quarters of a mile, the De Soto being, as nearly as possible, in the middle of the river, which was her proper place, the Buckeye then running on the island shore, which was not her proper place, attempted to cross the river, and was carelessly steered across the path of the De Soto; that as soon as the fact was discovered, of the intention of the pilot of the Buckeye, the officers of the De Soto caused her engines to be stopped, and her wheels backed, and every exertion made to prevent a collision; notwithstanding which, they came together, the starboard side of the Buckeye, in front, striking the larboard side of the De Soto, near the stem; and the Buckeye being very old and unsound, sunk in deep water, her cabin parting from her hull, and the De Soto, by backing her starboard engine, came alongside said cabin. That the collision was occasioned by the negligence and want of care of the officers of the Buckeye, and not by the want of skill or care, or by any malice or design, of any of the crew of the De Soto, who, with the master and pilot of the boat, used the greatest care and skill in her management, as well as every possible precaution to prevent the occurrence of any accident. That the Buckeye *has* very old, entirely unfit for navigation; that her timbers were decayed, and she was, at the time of the collision, in a leaky condition, and unsafe for the voyage.

The plea to the jurisdiction, set up by the respondents, reposes upon the same grounds which were taken in the case of the *owners of the Luda vs. the De Soto*, and overruled by this court, after able and elaborate arguments. The judgment of the court, overruling the plea, was subsequently affirmed by the circuit court of the United States for this district, Mr. Justice McKinley presiding; and I am, consequently, not at liberty to enter anew into the questions already decided, until the decree rendered by the circuit court shall have been reversed by the Supreme Court of the United States.

The evidence satisfactorily establishes the fact, that the tide ebbs and flows in Old river, at the spot where the collision occurred. The locality, therefore, brings the case within the admiralty and maritime jurisdiction of this court, although that locality be *infra corpus comitatus*.

The plea to the jurisdiction is therefore overruled. I shall now consider the questions growing out of the merits of the cause, as they have been presented by the pleadings.

In the examination of those questions, I have encountered the impediments which usually obstruct the path of a judge in his endeavors to arrive at a just and satisfactory conclusion upon the issues which are generally made in cases of this nature. My progress has not been delayed by any doubts in the application of legal principles, for, happily, the principles of law, governing the decisions of admiralty tribunals in such cases, are easy to be understood. They flow from the great foun-

tain of equity, and are easy to be imbibed. They are embodied in the brief but expressive articles of our code, which declare, that every act of man, that causes damage to another, obliges him, by whose fault it happened, to repair it; that every person is responsible for the damage he occasions, not merely by his act, but by his negligence, his imprudence, or his want of skill. That we are responsible, not only for the damage occasioned by our own act, but for that which is caused by the act of persons for whom we are answerable, or of the things which we have in our custody. C. C. 2,294, '5, '6.

The great difficulty has been, to ascertain the facts to which these principles of law are to be applied.

I have examined, with the most anxious care and solicitude, the immense mass of conflicting testimony which was introduced by the parties on the trial of the cause. The decree I am now called upon to render contains the result of that examination. And when I remember the importance of the case to the parties interested, I feel an abiding consolation in the reflection, that if I have fallen into error, that error will be rectified by a higher and abler tribunal.

There are four possibilities under which a collison may occur:

First. It may happen without blame being imputable to either party: as where the loss is occasioned by a storm, or any other vis major. In that case, the misfortune must be borne by the party on whom it happens to light, the other not being responsible to him in any degree.

Secondly. The misfortune may arise where both parties are to blame; where there has been a want of due diligence or of skill on both sides. In such a case the rule of law is, that the loss must be apportioned between them, as having been occasioned by the fault of both of them.

Thirdly. It may happen by the misconduct of the suffering party only; and then the rule is, that the sufferer must bear his burthen.

Lastly. It may have been the fault of the ship which ran down the other; and, in this case, the injured party would be entitled to an entire compensation from the other. (The Woodrop Sims. 2 Dodson's R., 83.)

Under the last of these "*possibilities*," to use the language of Lord Howell, the libellants contend, they have placed the respondents. They also contend that, although in this case, as in all others of a like nature, there is much contradictory evidence, they have yet answered that requisition of admiralty law which declares, that there should be prepondering evidence to fix the loss on the party charged, before the court can adjudge him to make compensation. (The Ligo, 2 Haggard, 356.)

An attentive review of the testimony must determine the correctness of these positions; and for the purpose of enabling us fairly to weigh that testimony, with the view of ascertaining the preponderance, I will present, first, that which has been offered by the libellants. The great number of witnesses examined renders it impossible to present their testimony in detail. I shall only give the facts which are material for decision of the case, and which I think have been clearly stated. I shall

then notice the contradictions, and determine the weight to be given to the opinions or declarations of the witnesses, by calling to my assistance such facts and circumstances, not dependent upon individual veracity, as I think a close examination of the case has afforded.

On the part of the libellants, it is clearly and distinctly asserted, that it is usual for ascending before entering the lower mouth of Old river, to run nearest the willow shore; that, after entering, they incline to the island shore for a half or three-quarters of a mile, and then wear around the bar. This is supported by the declarations of about ten different persons, mostly pilots, and all professing to have a familiar knowledge of the river, at the spot where the collision occurred. Two of these persons, Jourdan and Rollins, also declare, that it is usual for boats ascending to keep near the bar shore, and those descending to keep the bend. It is also shewn, and I think satisfactorily established, that from the wreck of the Buckeye to the willows the distance is 476 yards and two feet; and from the wreck to the island shore the distance is 557 yards and one foot. This fact is established by the testimony of three witnesses, who actually sounded the river and measured the distance. The deepest water was 400 yards from the place of the collision, towards the island shore. These witnesses also declare, that there are several snags nearly on the line on which it is supposed the Buckeye was running when rounding the bar. The actual soundings by them show that the water deepened from the place of collision towards the island shore, for about 400 yards; and that it became gradually shallower from the place of collision to the willow shore.

Several witnesses testify to the fact, that the alarm bell of the Buckeye rang first; that the bell of the De Soto rang immediately afterwards, and that both boats backed; that the stem of the De Soto struck the Buckeye on the starboard bow, about half-way between the forward hatch and the capstan, at an angle of about 45 degrees; that the latter boat sunk immediately, without changing materially her position after the collision; she pointed up stream, her bow slightly inclined towards the willow or bar shore. It is shewn by the witness, Brazelton, who, after the collision, made observations by means of a diving bell, that the De Soto broke in the starboard bow of the Buckeye, commencing within about 4 feet of the stem, going back nearly as far as the forward hatch, running in so far as to knock the capstan out of its place, and leaving it flat on the deck on the larboard side of the boat; where the wreck was not broken up, the belts of the Buckeye were also knocked loose. These effects the witness knew, by going down in the diving bell, and examining the same with his hands; he states further, that, from appearances, the De Soto's stem must have gone as far as the centre of the deck of the Buckeye, as the capstan, as before stated, was displaced; that the stem of the Buckeye was not injured by the collision, but that the chock passing round the bow was broken loose, and found lying on the beams that were not broken away. He states further, that the hull of the Buckeye has the appearance of lying parallel with the larboard or willow shore, her bow pointing up stream. The

witness knows this fact, by sounding on the hull with the lead, and, also, by descending in the diving bell and examining it attentively, and by finding it correspond with the direction in which the bell boats lay. Attached to this witness' testimony is a drawing, representing the extent of the injury received by the Buckeye.

In opposition to all this testimony, the witnesses examined on behalf of the respondents state, that the Buckeye was not, at the time of the collision, in the proper place for an ascending boat. The pilot of the De Soto (McGuire) states, that he left Barrow's woodyard at 3 o'clock in the morning, ran, by the way of the Atchafalaya, on the lower side of the island, about 4 miles, when he first saw a light, and supposed it might be a raft or flat boat; but on approaching nearer discovered that the light did not stand still; it settled along the island shore, until he saw it abaft the larboard chimney, $\frac{1}{2}$ or $\frac{3}{4}$ of a mile off; it then went out of his view a short time. He wished to see where it was, and stepped on the starboard side of the De Soto, and leaned forward, and saw the light standing, as he thought, right for him. He then discovered it was a steamboat, and *see* her plain. He asked the mate if that boat was not standing right for them, and the mate replied that she was, and that he (McGuire) had better stop his boat. He accordingly stopped her, and immediately rang the backing bell. The De Soto then backed, and continued doing so until the collision. The witness thinks she made 6 or 7 revolutions with both engines before they struck, which led him to believe that the De Soto had *steam* way on her; and when they came together he stopped the larboard engine, and backed slow on the starboard, which brought them alongside of each other, with their heads up stream. His boat stopped backing, and he rung the bell to go ahead, and spoke to the engineer, through the trumpet, to go slow. By this time the Buckeye had sunk.

The witness further states, that when his alarm bell was rung, it was answered by the Buckeye. They struck at angle of about 45 degrees, the De Soto going directly for the foot of the island, and the Buckeye crossing her at an angle of about 45 degrees. The De Soto's stem entered about 5 or 6 feet on the starboard side of the Buckeye's stem. Witness did not make any change of the De Soto so as to glance from the Buckeye. He expected her to straighten up on the island shore, and before she came on to the line on which he was running, and thinks he was 3 or 4 lengths from the Buckeye when he stopped his engine. He rung the alarm bell a little before that. The bells of the Buckeye and De Soto were rung nearly at the same time, which was just about the time the engine was stopped.

The principal part of this testimony is corroborated by that of Miller, the mate of the De Soto, and by Gray, Johnson, and Glasscock. The first a passenger on the De Soto, and the other two passengers on the Buckeye. The credibility of the last two witnesses has severely attacked by the proctors of the libellants; but, from the view I have taken of the case, it is unnecessary to determine with what success. The pilot of the Buckeye, as well as the mate, states that his boat was

not, at the time of the collision, crossing the river, but that she had already crossed, and was pursuing the course of an ascending boat around the bar. That she was in her position, is corroborated by the testimony of many old and experienced pilots who had seen the wreck. Some of these go so far as to say that it would not be safe to run at night nearer to the bar than where the wreck lies, on account of the snags, which stand along the line in which the Buckeye was evidently running. But we have seen that the witnesses on the part of the De Soto state that the Buckeye was not in her place, but should have run up nearer to the bar.

It is not my purpose to attempt to reconcile this conflicting evidence. I think it probable, however, that the pilot (McGuire) may have thought that, on first seeing the light of the Buckeye, she was ascending on the island shore.

From his position up the river, she would doubtless have that appearance; but I cannot believe that was fully aware of his own position at the time the collision occurred. It has been demonstrated, by actual admeasurement, that the Buckeye was nearer to the willow shore than to island, by at least 81 yards; and although she may have had the appearance of being near the middle of the river, yet, from the *petition* of the snags, which have been proved, beyond a doubt, to exist near the line on which she was running, it is fair to presume that, in a night run, she was near the bar as prudence would dictate.

It has also been demonstrated that the deepest was 400 yards from the place where the collision occurred; and it will not be denied that it is the duty of the descending boat to keep as near as possible the main channel of the river whenever they meet an ascending boat. There was deep water up to within a few feet of the island shore; and although the dictates of prudence did not require the pilot to know at every step where the deepest of the channel was, it is yet fair to presume, from all the circumstances, that he was at least from 150 to 200 yards out of his proper place. The moment he discovered the light of the Buckeye, it was his duty at once to take the main channel, and keep it, not only until there was no probability, but not even a possibility, of a collision occurring. Even the customs prevailing among pilots on our western waters, require that the descending boat should keep the channel, and allow the ascending boats to steer clear of her. But there is a positive law of the State of Louisiana, regulating navigation upon the rivers within her limits, directly bearing upon this subject, which it is my duty to see carefully and strictly enforced. It is a law dictated by wisdom and prudence, and imperatively called for by the many lamentable disasters arising from collisions of steamboats. It is a law of which, I am aware, pilots and captains generally profess themselves ignorant, and which *and which* they affect to treat with indifference. But the sooner their ignorance is enlightened, and they themselves aroused from indifference to a proper sense of responsibility, the better for their own interests, and for those of the public at large.

The section 10th of the act, entitled "An act relative to steamboats," approved March 6th, 1834, declares "that it shall be the duty of the master and pilot of a steamboat, when descending any river or stream in the limits of this State, when within one mile of an ascending steamboat, to shut off the steam and ring the bell, and permit the boat to float upon the current of the river until the ascending boat shall have passed; and the master and owner of the ascending boat shall then assume the responsibility of steering clear of the descending boat, and be liable in damages to the extent of the injury received."

The provisions of this law are evidently intended to apply to steamboat navigation by day as well as by night. If, from abundant caution, it is to be applied to navigation by day, how much more does prudence require that it should be strictly observed at night. Now, it is not pretended that the master and pilot of the De Soto, in the case under consideration, complied with any single requisition of this law. The pilot (McGuire) admits that he saw the light ½ or ¾ of a mile off. When he first discovered it, he thought it might be a raft or flat boat; but, on approaching nearer, the light did not stand still. It was his duty, then, the moment he discovered it in motion, to ring his bell and stop his engine, and keep his boat, as near as possible, in the channel. He was liable at every time, in the river, to encounter a steamboat; and when we consider, for an instant, the vast number which are constantly moving up and down the stream upon which the collision occurred, it is not exacting too much to say, that it was his bounden duty to be constantly vigilant—constantly on his guard, as if in momentary expectation of meeting them. But what do we find, even from his own testimony? Why, "that he lost sight of the light a short time, and wished to see where it was. He then stepped on the starboard side of the De Soto, and leaned forward, and *soon* the light, standing, as he thought, directly for him. He then saw it was a steamboat, and he saw it plain." Did he then immediately ring his bell, and stop his engine, and float on the stream? Not so; but asks the mate if that boat was not standing right for them. The mate replied that she was; and that he (McGuire) had better stop his boat. He then accordingly stopped her, and rung the bells for her to back. But she had only time to make 6 or 7 revolutions before the collision occurred.

I am reluctant to speak of this pilot with harshness, but his own testimony in my opinion convicts him of unpardonable negligence; when we take into consideration the solemn responsibility of the station he occupied. A more charitable view of his conduct might impute the occurrence of the disaster to his ignorance or want of skill, or to the infirmity under which some of the witnesses say that it was believed he sometimes labored, of not seeing well at night. But apart from any legal enactment on the subject, he has shewn enough to render him amenable for the collision on general principles of admiralty law, and with the law which has been invoked before us the case can scarcely admit of a rational doubt. It is totally unavailing to throw the responsibility upon

the pilot of the Buckeye. That, as the ascending boat, was under no legal obligation to stop her course, it was *her* duty to assume the responsibility of steering out of the way; and there is a fair ground for the presumption that she would have done so if the opportunity had been given her.

But apart from these considerations, I am clearly of the opinion that the Buckeye was not only as near her place in the river as the position of the snags before mentioned, and a voyage by night, rendered prudent; but that she was not, at the moment of the collision, running across the river in the track of the De Soto. I shall not stop to question the veracity of the witnesses who have sworn to the contrary. They may have testified according to the corrections of their understanding, but I believe they were mistaken. When I consider, in the first place, the violence of the collision and its disastrous consequences to the Buckeye, it is difficult to believe that either of the boats had succeeded in stopping its progress. There is little reliance to be placed upon the recollections of witnesses in relation to incidents occurring under circumstances of so much terror and confusion.

But I assume the position grounded upon facts, about which there can be no dispute, that the Buckeye was not running, as the respondents contend, across the river and across the bow of the De Soto. The nature and extent of the injury received by the former, and more especially her present position with respect to the willow shores, renders it at least highly improbable that she was running *across* the river at all. The proctor for the libellants has furnished the court with diagrams illustrating this point in a manner which reduces it almost to a mathematical demonstration. They render it indeed, to my mind, as clear and satisfactory as deductions from the laws of physics can make it. The first, drawn in accordance with the hypothesis of the respondents, shows that the blow received by the Buckeye would have thrown her bow far down stream, instead of up as it now lies. The second, drawn in accordance with the hypothesis of the libellants, shows that the blow, such as the Buckeye really received, on her starboard bow, between her jack staff and forward hatch, while she was moving up stream, (the De Soto striking her on the spot mentioned at an angle of 45 degrees,) would have thrown her bow slightly to the shore. In that position she now lies. The effects of the blow, while she was moving up stream, was plainly to knock her back without turning her far around.

It is proper, before dismissing the case entirely, that I should notice the ingenious argument of the proctor of the respondent, to show that the law of Louisiana, which has been invoked, is inapplicable. In the case of the owners of the *Luda vs. the De Soto and owners*, this court decided that the law in question formed the criterion by which it was competent to test the liabilities of the then respondents, and its views here concurred in by the circuit court. But the respondents' proctor contends, that it cannot apply to the waters of Old river, because it has no current. To this position I cannot assent. I am not at liberty to say that the Legislature of Louisiana did not intend that a law, passed

to regulate the navigation of steamboats in all the rivers and streams within her limits, should have no applicability to the navigation of a particular river, which, for a short distance, is but little affected by a current, but which is the medium of daily communication, by means of steamboats, from the waters of the Mississippi to Red river, and which, from the narrowness of its channel, requires the rules and customs observed elsewhere to be as rigidly followed to prevent collisions, and other calamities, to which steamboats, in passing its bars and bends, are constantly liable. I am aware of the maxim, *cessante racione lex cessat*, but it does not apply to the case before me. Much was said by the proctors of the respondents in extenuation of the act of the pilot of the De Soto, in sinking the Buckeye, concerning the age and supposed unseaworthiness of the latter boat. These would be good reasons why the community should have regarded her as unfit for the transportation of passengers and property, but it is no reason why a stronger boat should be permitted to run over and sink her. The charge that she was unseaworthy has been, moreover, rebutted by the testimony of the witnesses Spedden, Robertson, and Snyder; she has been shewn to have cost $3,000, on the day, and to have subsequently undergone repairs to the amount of $1,200. She was doubtless old, but her timbers were considered sound. Her age will be taken into consideration in fixing the amount of damage. In assessing the damages against the respondents, I shall estimate her value at - - - $3,000
The value of the freight at - - - - - 2,500

Making - - - - - - - $5,500
which it is ordered, adjudged, and decreed, to be paid to the libellants, by the respondents, with costs of suit.

Testimony.

THURSDAY, *May* 1*st*, 1845.

Testimony taken in open court.

Ivers Jewett, being duly affirmed, saith: That he was on the Buckeye, as a passenger, at the time she was sunk by the De Soto; a few minutes before the collision he was on the right guards, and remained there about a minute; the Buckeye was going up stream, and about the middle of the stream; the night was pleasant, and the boat was getting on well. Witness thinks, from his position on the right guard, that he was able to say whether she was in the centre of the river or near shore; in about a few minutes after he was on the guard, (say from 5 to 10 minutes,) the collision took place with the De Soto; after he heard the collision, started for the door, where, having arrived, he found the boat careened over; he then went back for his clothes, and then the boat commenced filling with water.

Cross-examined by R. N. Ogden.

Lives in New Orleans, formerly resided in Alexandria; when he went out on guards thought the Buckeye was heading up stream. The

boat did not look as if going across the stream, and his attention was so far directed to the matter as to enable him to form the opinion already stated; he looked up and down the stream, and, as stated, considered the boat as going up in the centre of the river, that was the second night on board; had slept well the night before, as usual on boats; he stepped out on the right guard; he cannot state whether it was one, two, three or four hundred yards from the shore; he can't say whether he is a good judge of distances or not; he did not out on the forward deck, but stopt on the guards, and went back on the wheel, and from thence returned to cabin, where he went to bed, and remained until the collision. He was acquainted with the captain at that time, and for some years; and that the reason he preferred going on his boat.

Examination in chief resumed.

States, when he says that he can't tell the distance from the shore, that he nevertheless thinks the boat was in the middle of the river.

Testimony for appellants.

J. P. Benjamin, sworn, states that he went on board the Buckeye the evening before she started; thought the boat was too heavily laden, which induced him to insure certain property of his, that was about to be taken up Red river by the boat. States that he had no experience in such matters, but thought that the boat was too heavily laden. A friend of his, H. M. Hyams, and his family, with negroes, and other property for a plantation, owned by them in partnership, was going up on the boat. Witness did not say any thing to him of his apprehensions for fear of alarming him, and as witness knew that said Hyams was determined upon going.

Isaiah Garrett, also sworn, saith: That he was on board of the Buckeye at the time of the collision, and was up at the time, and had not yet gone to bed at the time of the collision. His reasons for being up were apprehensions of the boat not being safe; he had determined not to go to bed until they got out of the Mississippi, which he had stated to some of his friends; his apprehensions arose from his knowledge of the boat being an old boat; they had considerable difficulty on the way in chimneys blowing down, and perhaps his apprehensions might have been occasioned by the remarks of other passengers. Another reason might have influenced him, he had not been used to travelling on steamboats, and he had his family on board, which no doubt influenced him a great deal; perhaps another cause of his apprehensions was that, the night previous, he thought he heard sounds of pumping, whether it was or not cannot say, but was induced to suppose so; at the time of collision most persons had retired, some were up; the boat was much crowded.

Witness had heard of Johnson, and that he was engineer, and on board at the time, but had no previous acquaintance with him. He has some acquaintance with Mr. Sollabellas, he was on board the night of the collision; thinks that for some little time before the accident, Selabellas had retired, and that he saw him again shortly before the

collision, near the table where witness was playing cards; thinks Selabellas was playing cards also.

Cross-examined.

Says that it is usual with persons travelling with families to feel some anxiety; on this occasion he felt more than usual. When the Buckeye came down the trip before, she had a large quantity of cotton; he was on board. Did not hear any conversation about Johnson until some two or three hours after they got aboard of the De Soto, which took place early in the morning. There was a great deal of conversation among the passengers about these persons who had aided them in rescuing them from the wreck. The game they were playing was poker. Can't say positively whether Salallas was playing or not.

J. R. Borgsted, also sworn, saith, that he is acquainted with a man by the name of Isaac Johnson; can't say whether he was on board of the Buckeye at the time of collision; has known him for 10 years; he is profession an engineer; deponent was on board four months with Johnson, who acted as engineer, while deponent was bar-keeper on same boat, the Washita; he (Johnson) is a man of character and standing, and every dependence to be put in him; his general character is good for veracity, and witness would believe him on oath.

Cross-examined.

Says he was bar-keeper at that time; he is now a merchant, of the firm of J. R. Borgsted & Co., on New Levee, where he has been in business for the last eight years.

David Maguire sworn, says, that the width of the De Soto pilot-house is 12 feet, and the position of the pilot is about 15 feet abaft the chimneys; the diameter of chimneys about 50 feet, and the chimneys about 11 or 10 feet apart. The larboard chimney of his boat intercepted the lights of the Buckeye, as she was coming up the river, and witness was about 10 or 15 feet from the chimneys; afterwards, he stepped out from behind the chimneys, and from the space between the chimneys he saw the Buckeye.

John Lynch being sworn, saith, that he has the management of the Corinne, engaged in the Ouachita trade; the boat is about 180 tons, custom-house measurement; the worth of a full trip of a boat about the size of the Corinne, at good prices, from $1,500 to $2,000. The Buckeye would not carry as much as the Corinne, the difference between these boats was at least $\frac{1}{3}$.

Cross-ex.

Freight and passengers have been reduced this year; if the passengers were at $15, it would increase his estimate much; passage now is $8.

H. G. Mercer, sworn, states, that he is acquainted some with steamboating business; knew what he paid for passage money from New Orleans to Columbia, being $8, on the trip of the Buckeye; price of passage money has been reduced, but not at present; the price of passage

money and freight was reduced when the Corinne was running in that trade this season.

Circuit court of the United States, district of Louisiana:

I, Duncan N. Hennen, clerk of the circuit court of the United States, in and for the district of Louisiana, do hereby certify, that the foregoing 26½ pages contain a full, faithful, and true transcript of the record and proceedings, together with all the evidence adduced, (and a plan, &c., hereto annexed,) together with the transcript from the U. S. district court hereto annexed, on the trial of the case of G. H. Caldwell et als., &c., vs. Master and Owners of steamboat De Soto et als., No 1,330, so far as the same now remain on file in said court.

In testimony whereof, I have hereunto signed my name and [SEAL.] affixed the seal of said court, at the city of New Orleans, this 2d day of June, A. D. 1845, and 69th year of American independence.

For DUNCAN N. HENNEN, *Clerk.*
F. McCULLOCH, *D'y Clk.*

I, Theodore H. McCaleb, judge of the district court of the United States for the district of Louisiana, and one of the judges of the circuit court of the United States, for the fifth circuit and district of Louisiana, do hereby certify, that Duncan N. Hennen is the clerk of the circuit court of the United States, for the fifth circuit and district of Louisiana, and that F. McCullock, who signed the foregoing certificate, is deputy clerk of said court, and was at the time of so doing, and that full faith and credit are due to his acts as such, and that the foregoing certificate is in due form of law.

Witness my hand and seal, this 24th day of June, 1845.

THEO. H. McCALEB. [SEAL.]

Writ of Appeal.

Copy of the writ of appeal lodged in the clerk's office of the circuit court of the United States, for the fifth circuit and district of Louisiana, in pursuance of the statute in such cases made and provided, this 17th day of May, 1845.

R. N. & A. N. OGDEN,
Attorneys of plaintiff in appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court, before you, or some of you, between George H. Caldwell, master of the steamer Buckeye, as also one of the owners thereof, who is a resident of New Orleans, Louisiana, and James Smith, resident in the parish of Catahoula, the other owner of the said steamer Buckeye, her tackle, ap-

parel, and furniture, and P. F. Kimball, owner of the steamer De Soto, her tackle, apparel, and furniture, and Thomas W. Reed, now, or lately, master thereof, a manifest error hath happened to the great damage of the said P. F. Kimball, owner of the steamer De Soto, her tackle, apparel, and furniture, and Thomas W. Reed, now, or lately, master thereof, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable R. B. Taney, chief justice of the said Supreme Court of the United States, this of May, in the year of our Lord one thousand eight hundred and forty-five.

DUNCAN N. HENNEN.

[L. S.] *Clerk of the United States circuit court and eastern district of Louisiana.*

Citation in appeal.

The United States of America, to George H. Caldwell, master of the steamer Buckeye, and one of the owners thereof, a resident of New Orleans, Louisiana, and James Smith, a resident of the parish of Catahoula, the other owner of the said steamer Buckeye, her tackle, apparel, and furniture, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein P. F. Kimball, owner of the steamer De Soto, her tackle, apparel, and furniture, and Thomas W. Reed, now or lately master thereof, plaintiff in appeal, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in appeal, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this seventeenth day of May, in [SEAL.] the year of our Lord one thousand eight hundred and forty-five.

J. McKINLEY,

Associate justice of the Supreme Court of the United States.